CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Financial Planning, Administration and Policy Division

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	January 18, 2023
SUBJECT/REPORT NO:	Residential Vacant Unit Tax Program Framework (FCS21017(c)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Gloria Rojas (905) 546-2424 Ext. 6247
SUBMITTED BY: **SIGNATURE:**	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department

RECOMMENDATION(S)

(a) That the Residential Vacant Unit Tax program framework as detailed in Appendix "A" to Report FCS21017(c) be approved;

(b) That the City Solicitor be authorized and directed to prepare all necessary by-laws for the purposes of levying and collecting the Residential Vacant Unit Tax for the 2023 reference year;

(c) That any annual net operating revenues of the Residential Vacant Unit Tax Program be transferred to a new Affordable Housing Reserve for affordable housing initiatives after the implementation costs are repaid to the Investment Stabilization Reserve 112300;

(d) That a late mandatory declaration fee under the Residential Vacant Unit Tax Program of $250 be charged;

(e) That staff be directed to report back with the findings from the first year of the Residential Vacant Unit Tax as part of an annual reporting requirement.

EXECUTIVE SUMMARY

On June 8, 2022, Council approved the implementation of the Vacant Home Tax Program, now named Residential Vacant Unit Tax (VUT) Program, starting in 2023. The main objective of implementing a VUT is to encourage owners to rent out empty properties, in order to increase the supply and affordability of housing. A tax on vacant residential units is designed primarily as a housing tool rather than a revenue tool. A secondary outcome of the VUT can be additional net revenue after operating costs for the City.

Report FCS21017(c) "Residential Vacant Unit Tax Program Framework" recommends the design features of the program and presents an update on the housing market, as well as, information on related programs at the federal and provincial level.

In recognition that this is a new tax and in order to achieve a high level of compliance, staff has developed a comprehensive communications and education strategy that includes targeted mailouts, social media messages, a detailed Q&A section in the City's website and increased support in the Customer Contact Centre. One of the key messages of the communication campaign is that principal residences will not be subject to the VUT but they are still required to submit the mandatory declaration.

Staff is also recommending that in order to measure the effectiveness of the tax, annual reporting on the results and trends be performed.

Information previously presented on the financial implications of the program and the results of public consultation is summarized later in Report FCS21017(c).

The Residential Vacant Unit Tax (VUT) is an annual tax payable by the owner of an eligible property that has been vacant for more than 183 days in the previous calendar year. All owners of eligible properties must submit an annual mandatory declaration on the status of their property.

An eligible property means property or a portion of a property that is assessed in the Residential property class by Municipal Property Assessment Corporation (MPAC) is categorized in one of the property codes set out in Table "B" of Appendix "A" to Report FSC21071(c) and is taxable under the *Municipal Act*. A non-exhaustive list of eligible properties includes single family homes, semi-detached homes, townhomes, residential condominiums, duplexes, triplexes, fourplexes, five-plexes and six-plexes, among others.

With the submission of an annual mandatory declaration, a principal residence will not be subject to the VUT.

Staff is recommending a tax rate of 1.0% of the Current Value Assessment (CVA) of the residential property upon which the vacant unit is located, based on the most recently returned assessment roll.

A vacant residential unit will be exempt from the VUT in case of the death of the owner, if major renovations make the occupation of the unit impossible, in case of the sale of the property, if there is a court order prohibiting occupancy of the residential unit or if the principal resident is in care, institutionalized or hospitalized.

Mandatory declarations on the status of the property received after the prescribed dateline, but before billing, will be charged a late mandatory declaration fee of $250. The VUT tax is considered a lien on the property and will be subject to the same penalty and interest as property taxes. The program also considers offenses such as making a false mandatory declaration and providing insufficient or false information.

Regular audits will be conducted to ensure the accuracy of the mandatory declarations and compliance with the program. If, as a result of an audit, the property is deemed vacant, the property will be subject to the VUT.

The VUT will have a two-tier appeal mechanism. The first tier will be a complaint process and the second tier will be an appeal process. If an appeal is successful, the VUT, including any penalties and interest, will be rescinded.

Additional details on the program framework are included in Appendix “A” to Report FCS21017(c).

The *Municipal Act, 2001* requires that a by-law be passed in the year to which the tax relates to stating the tax rate, definition of a vacant home, exemptions, rebates, as well as, audit and inspections powers. Staff will bring forward a by-law for Council approval on or before November of 2023.

Alternatives for Consideration – Page 13

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Staff estimated that based on a tax of 1% on the assessed value of the property, the City could receive a net revenue of $3.3 M in the first five years of the program. Implementation costs are estimated at $2.6 M which will be borrowed from the Investment Stabilization Reserve (112300) and repaid from VUT revenue. The annual program administration costs are estimated at $2.2 M and will also be funded from the VUT revenue. Additional details are included in Report FCS21017(b) “Vacant Home Tax in Hamilton”. To the end of 2022, no funds have been drawn from the reserve for the implementation of the program.

Staffing: An estimated total of 16 full time equivalents (FTE’s) will be needed to for the administration of the VUT program including audit and appeals and supporting functions including IT support and maintenance and customer service. These FTE’s were approved June 1, 2022 through Report FCS21017(b). To date, the implementation has been conducted solely with internal resources. The hiring of program staff will be conducted on an "as needed" basis.

Legal: The City requested authorization from the Province to be a designated municipality for the purposes of Part IX.1 of the *Municipal Act 2001*, which was granted under O. Reg 458/22. In addition, legislation requires that an annual by-law be passed on the year in which the tax applies. This provision is included in Recommendation (b) of Report FCS21017(c).

HISTORICAL BACKGROUND

At its meeting of December 11, 2019, Council approved a motion directing staff to review the feasibility of imposing a tax, fee or charge to the owners of vacant properties (GIC Report 19-026, Item 12.1).

Staff prepared Report FCS21017, "Considerations to Implement a Vacant Home Tax in Hamilton" which presented information on the implications of imposing a vacant home tax in the City of Hamilton. Staff received further direction to prepare a report on using the Vacant Building Registry as a means to identify vacant homes (GIC February 25, 2021, Report (Budget) 21-002(j)).

Report FCS21017(a) / PED21114, "Considerations to Implement a Vacant Home Tax in Hamilton" provided information on the Hamilton Vacant Building Registry, as well as, additional information on the implementation of a vacant home tax in Vancouver, Ottawa and Toronto, the housing information from the 2016 Census and an update on Hamilton's rental market. A motion was approved for staff to report back with a draft by-law, guidelines and framework for public consultation and consideration (GIC July 5, 2021, Report 21-014).

At the GIC meeting of February 2, 2022, staff presented Report FCS21017(b) "Vacant Home Tax in Hamilton" and recommended that the City request authorization to the Province to levy the tax and to start the implementation of the program. Staff was directed to request the authorization to the Province. However, the recommendations regarding the implementation of the program were deferred.

On May 2, 2022 the Province passed legislation O. Reg 458/22 making Hamilton a designated municipality for the purposes of Part IX.1 of the *Municipal Act 2001.* On June 1, 2022 Report FCS21017(b) "Vacant Home Tax in Hamilton" was reconsidered by General Issues Committee and, on June 8, 2022, Council approved the recommendations to start the implementation of the program. However, given the timing of the Provincial approval, 2023 was determined as the first reference year for the tax.
Report FCS21017(c) "Residential Vacant Unit Tax Program Framework" recommends the design features of the program and presents an update on the housing market, as well as, information on related programs at the federal and provincial level.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

Part IX.1 of the *Municipal Act, 2001* contains provisions permitting municipalities to impose a tax for vacant units that are classified in the residential property class and that are taxable under the Act for municipal purposes. To be able to impose such tax, a municipality must be designated by regulation. On May 2, 2022, the City received authorization from the Province to be a designated municipality for the purposes of Part IX.1 of the *Municipal Act 2001* which was granted under O. Reg 458/22.

Other provisions needed to impose the tax include a by-law passed in the year to which it relates stating the tax rate, definition of a vacant home, exemptions, rebates, as well as, audit and inspections powers. Staff will bring forward a by-law for Council approval on or before November of 2023, having 2023 as the first reference year of the program.

RELEVANT CONSULTATION

The Financial Planning, Administration and Policy Division with the support from Corporate Communications conducted a “Vacant Home Tax” online engagement project with the goal of getting input from interested stakeholders on the need to implement a tax on properties that are left vacant for a certain period of time and the issues to be considered in implementing such a tax.

An online survey in the Engage Hamilton platform was launched on September 7, 2021 and closed on September 30, 2021. The “Vacant Home Tax” engagement page had 5,400 visitors and of those, 3,860 participated in the survey.

Some of the highlights of the survey are below:

- 91.4% of respondents support the idea of a vacant home tax
- 71.5% think that the number of vacant homes in Hamilton is negatively impacting the supply of affordable housing
- 80.7% support a mandatory declaration
- 52.7% support a tax rate of 2% or more
- there was strong support for the City to consider a variety of exemptions to the residential vacant unit tax

Detailed survey results can be found in Appendix “B” to Report FCS21017(b) – Project Report, 07 September 2021 – 30 September 2021 – Engage Hamilton – Vacant Home Tax.

As part of the engagement process, staff also met with representatives from the West End Hamilton Home Builders Association (WE HBA) and The Hamilton District Apartment Association (HDAA), who provided their input on the implementation of the tax. The comments submitted by the WE HBA are included in Appendix “C” to Report FCS21017(b). In addition, Lou Piriano, President of the Realtors Association of

Hamilton-Burlington, spoke at the GIC meeting of February 2, 2022 as part of a Delegation Request regarding Report FCS21017(b) “Vacant Home Tax in Hamilton”.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

As previously reported, the main objective of implementing a Vacant Unit Tax (VUT) is to encourage owners to rent out empty properties in order to increase the supply and affordability of housing. It can be reasonably assumed that by simply announcing the tax and its effective taxation date of January 1, 2023, some owners of vacant properties may seek out tenants or sell the property to avoid paying the tax.

A tax on vacant residential units is designed primarily as a housing tool rather than a revenue tool. However, a secondary outcome of the VUT is additional revenue for the City.

The residential Vacant Unit Tax (VUT) is an annual tax payable by the owner of an eligible property that has been vacant for more than 183 days in the previous calendar year. All owners of eligible properties must submit an annual mandatory declaration on the status of their property. Failure to submit a mandatory declaration will result in the property being deemed vacant and made subject to the VUT.

Eligible Properties

An eligible property means property or a portion of a property that is assessed in the Residential property class by MPAC, is categorized in one of the property codes set out in Table “B” of Appendix “A” to Report FSC21071(c) and is taxable under the *Municipal Act, 2001.* A non-exhaustive list of eligible properties includes single family homes, semi-detached homes, townhomes, residential condominiums, duplexes, triplexes, fourplexes, five-plexes and six-plexes, among others.

Where an eligible property has more than one residential unit, a mandatory declaration will be required for each unit and the property will be deemed vacant if one or more of the residential units were vacant for more than 183 days in the previous calendar year. The VUT will be adjusted based on the number of vacant units in the property.

With the submission of an annual mandatory declaration, a principal residence will not be subject to the VUT.

Vacant residential land in the residential tax class and residential properties with seven or more units assessed in the Multi-Residential and New Multi-Residential classes are not subject to the Vacant Home Tax.

Vacant Residential Unit

A residential unit is vacant if it has been unoccupied for more than 183 days during the previous calendar year or is deemed vacant by the City of Hamilton.

A reasonable time to make renovations or to find suitable occupants for an unoccupied property is considered to be 183 days. This period of time is consistent with what Toronto and Ottawa, the only other two municipalities in Ontario that have implemented the tax, have included in their definition of vacant residential unit.

A residential unit may be deemed vacant by the City and subject to the tax if the owner:

- failed to make a mandatory declaration by the prescribed deadline;
- made a false mandatory declaration;
- failed to provide information or to submit any evidence required by the City;
- provides false information or submits false evidence to the City; or
- if at least one unit within the eligible property is unoccupied.

Tax Rate

Staff is recommending a tax rate of 1.0% of the Current Value Assessment (CVA) of the residential property upon which the vacant unit is located, based on the most recently returned assessment roll.

Toronto and Ottawa have also opted for a 1.0% tax rate in recognition that this rate will offer an incentive to change homeowners' behaviours or to comply with the tax while providing a positive revenue stream.

The rate will be reviewed annually and will be adjusted, as appropriate, to ensure effectiveness of the program.

VUT Exemptions

If any of the following circumstances exist during the previous calendar year, a vacant residential unit will be exempt from the VUT for that year:

Death of an owner: The exemption applies to the year of death plus one subsequent year only.

Major renovations: Major renovations or redevelopment make occupation of a unit impossible for more than 183 days in the same calendar year, provided a building permit has been issued under the *Building Act*.

Sale of the property: The VUT shall not apply in the year of the sale, provided that the transfer is to an arm's length transferee.

If any of the following circumstances exist during the previous calendar year, the residential unit shall not be considered vacant during the exempt period.

Principal Resident is in care, institutionalized or hospitalized: Period when the principal resident of a residential unit resides in a hospital, long-term or supportive care facility.

Court Order: Court order prohibiting occupancy of the residential property is in effect.

Fees, Fines, Penalties and Offences

Mandatory declarations on the status of the property received after the prescribed dateline but before billing will be charged a late mandatory declaration fee of $250.

The VUT is considered a lien on the property and will be subject to the same penalty and interest as property taxes. According to By-law No. 13-136, By-law to Impose Late Payment Charges for Non-Payment of Taxes, the penalty is 1.25% on the first day of default and interest is 1.25% per month.

The program also considers offenses such as making a false mandatory declaration and providing insufficient or false information.

Audits

The Program Administrator will conduct regular audits to ensure the accuracy of the mandatory declarations and compliance with the program. Audits regarding the status of a property could be conducted for the current reference year plus the two most recent previous reference years.

If, as a result of an audit, the property is deemed vacant, the property will be subject to the VUT.

Dispute resolution

The VUT will have a two-tier appeal mechanism. The first tier will be a complaint process and the second tier will be an appeal process.

A property owner who believes they have been charged the VUT in error will have 60 days after the tax bill or the audit determination notice has been received to submit a notice of complaint. The notice of complaint form will be available on the City's website.

Upon receipt of a complaint, the Program Administrator may request additional information to support the claim. The complaint will only be considered if the requested information is received within a specified period.

If the complaint is successful, the VUT, including any penalties and interest, will be rescinded.

Property owners whose complaint has been denied can appeal the decision to the Appellate Authority within 60 days of the denial of the notice of complaint by submitting a Request for Review. The Appellate Authority will review the request and issue a decision within 60 days of receipt of the Request for Review or receipt of additional information requested by the Appellate Authority. A notice of determination issued by the Appellate Authority shall be final.

Program Timeline

Eligible properties that have been vacant for a period of 183 days or more will have the tax included in the property tax bill, unless an exemption applies, and due dates will follow the schedule of the property tax. The mandatory declarations on the status of the property will be mailed to owners of eligible properties by mid-December of the reference year. The deadline to submit the mandatory declaration without penalty will be March 31st of the tax year. Mandatory declarations received between April 1st and April 30th will be charged a late fee of $250. If the mandatory declaration is not received by April 30th, the property will be deemed vacant and the VUT will be charged.

Property owners will have the option to submit the mandatory declaration by mail or to use the mandatory declaration platform that will be available in the City's website. The mandatory declaration platform will open on January 1st of the tax year. For example, for the 2023 reference year, the platform will open on January 1, 2024.

Table A indicates the program key dates.

Table A
Vacant Unit Tax Program Key Dates

Date	Action
Early November 2023	By-law approval*
Mid December 2023	Mandatory declarations are mailed
January 1	Mandatory declaration platform opens
March 31	Mandatory declaration deadline
April 1 to April 30	Late mandatory declarations will be accepted with a fee
First week of June	Tax bills are mailed
June 30	First tax payment due
July 2	Complaint period begins
September 30	Second tax payment due

* For reference years beyond 2023, it is recommended that the by-law be passed at an earlier date.

Additional details on the program framework are included in Appendix "A" to Report FCS21017(c).

Communications Strategy

In recognition that this is a new tax and in order to achieve a high level of compliance, staff has developed a comprehensive communications and education strategy. A dedicated page for the VUT has been created in the City's website and several social media messages have been sent to raise awareness.

Upon approval of the framework presented in Appendix "A" to Report FCS21017(c), a more robust and detailed campaign will take place. In order to make sure that property owners are aware of the upcoming tax and the requirement to complete the mandatory declaration on the status of the property, the City will mail flyers to the more than 170,000 eligible properties with information on the timelines, the mandatory declaration, exemptions, etc. The campaign will also include a detailed Q&A section in the City's website, social media messages and increased support in the Customer Contact Centre.

One of the key messages of the communication campaign is that principal residences will not be subject to the VUT but they are still required to submit the mandatory declaration.

The mandatory declaration will be mailed to the eligible properties by mid-December and several reminders will be sent during the declaration period in order to maximize compliance with the program.

Annual Reporting

Staff is recommending that in order to measure the effectiveness of the tax, annual reporting and monitoring be required. The annual report would include analysis on the results and trends, as well as, recommendations on any possible changes to the program. The annual report shall be presented in the fourth quarter of the year following the reference year.

Estimated Revenue and Program Costs

One of the most challenging components of implementing the vacant home tax is the unknown number of empty properties that would be eligible for the tax in the City. However, after careful analysis that included Census data and the experience from other municipalities, staff concluded that the City has approximately 1,135 unoccupied residential properties that would pay the VUT. Under this estimate and based on the average residential assessment of $381,000, the City could expect to receive $4.3 M in revenue in the first year the tax is imposed, assuming the recommended tax rate of 1.0%.

Implementation costs, which include the development of the software for the taxation and collection systems, as well as, the development of the mandatory declaration, administrative processes for the program, the audit and the appeals process and education and awareness campaigns, are estimated at $2.6 M for the 2022-2023 period. The funds to cover these costs will be borrowed from the Investment Stabilization Reserve and will be repaid, including interest, with the revenue generated from the program which the City will start receiving in 2024.

Annual operating costs are estimated at $2.2 M starting in 2024 and include 16 new FTEs, billing, printing, communication and IT maintenance, among others. The hiring of program staff will be conducted on an “as needed” basis as some of the FTE’s need to be hired early in the process to support the creation, set up and implementation of the program, while others would need to be hired and trained by the end of Q4 2023 to be ready for the administration of the program. Operating costs will also be recovered with the revenues generated by the program.

Staff estimates that, for the 2023-2028 period, the program will generate a net revenue of $3.3 M which staff is recommended to be directed to affordable housing initiatives. The estimate assumes a reduction of 20% in the number of eligible properties in the second reference year, followed by a gradual reduction of 5% every year. This annual reduction in the number of properties being taxed is a way to measure the success of the program.

It is important to recognize that the residential market is strongly related to the composition of the population as properties owned by non-residents are more likely to be left vacant for speculative purposes. In Hamilton, only 6% of the population were non-Canadian citizens and only 1% were not residents. Based on these statistics, staff believes that having only 0.5% of the properties (880 properties) paying the tax is also a possibility. Under this scenario, during the 2023-2028 period, the program would have a net deficit of approximately $532,000. While the main objective of the program is to increase the stock of properties by creating an incentive to rent or sell unoccupied properties, it is important to note that there would not be funds available from this program to dedicate to affordable housing initiatives.

MUNICIPAL WORKING GROUP

The Ministry of Finance has announced that a municipal working group will start meeting in December 2022 with the purpose of developing a policy framework for the tax on unoccupied properties. City of Hamilton staff along with staff from municipalities that are implementing or have expressed interest in implementing the tax have been invited to participate. Staff will report to Council on the outcome of this working group and will recommend any necessary course of action.

UPDATE ON HOUSING MARKET

According to the Realtors Association of Hamilton Burlington (Hamilton Monthly Statistics Package October 2022), new listings in October slowed compared to earlier in the year but remained nearly 10% higher than last year's levels. Much of the growth in new listings was driven by homes priced above $800,000, providing limited choice for those looking for more affordable and attainable options. While conditions have not entirely shifted to favour buyers based on traditional measures, like the months of supply or the sales to new listings ratio, prices have trended down for the eighth consecutive month.

Benchmark prices continue to trend down from the higher levels reported earlier in the year. The most significant adjustment has occurred in the detached sector, where prices eased from a high of $1,080,200 in February to $826,200 in October. Detached homes priced below $800,000 continue to experience relatively tight conditions, while higher priced properties are reporting higher months of supply. However, while there is an overall year-over-year decline for the month of October, prices are still higher than levels reported at the end of 2020.

In terms of sales, year-to-date sales have declined by nearly 31% over last year and remain below the 10-year average.

However, while continued interest rate hikes from the Bank of Canada are dissuading potential home buyers, there is a higher demand in the rental market due to booming immigration, students returning to university, and workers moving back to city centres.

According to Rentals.ca and Bullpen Research and Consulting, the average monthly price for a one-bedroom rental home in Hamilton increased by 15.5% to $1,696 per month in August compared to the same time last year, and a two-bedroom rental home increased by 21.5% to $2,167 per month.

PROVINCIAL AND FEDERAL PROGRAMS

Ontario's Non-Resident Speculation Tax (NRST)

On April 21, 2017, the Government of Ontario implemented a Non-Resident Speculation Tax ("NRST") which is a tax payable on the purchase of a residential property located anywhere in Ontario. The NRST is payable by foreign entities or taxable trustees of a foreign entity and is paid in addition to any applicable land transfer taxes. When implemented, the NRST was 15% and applied only to residential properties located in Greater Golden Horseshoe region. Effective March 30, 2022, the tax was increased to 20% and applies to purchases in the entire province of Ontario. Effective October 25, 2022, the NRST was increased further to 25%.

Despite its description, the NRST applies regardless of whether a property is acquired with a speculative investment intention.

Federal Underused Housing Tax

On June 9, 2022, Canada's Bill C-8, *Economic and Fiscal Update Implementation Act, 2021*, received Royal Assent and was enacted. Bill C-8 implements, among other measures, the *Underused Housing Tax Act* (UHT Act) which is an annual 1% tax on the value of vacant or underused residential property directly or indirectly owned by non-resident, non-Canadians, effective January 1, 2022. The stated purpose for introducing a national underused housing tax was to counter speculative transactions and undesired vacancy in Canadian residential real estate.

The UHT applies in respect of a calendar year to an owner of residential property in Canada as of December 31 of the calendar year if: (1) the owner is required to file an annual declaration in respect of the property for the calendar year; and (2) the owner is not eligible to claim an exemption in respect of their interest in the property for the calendar year.

Every owner of a residential property, other than an excluded owner, will be required to file an annual declaration with the Canada Revenue Agency (CRA) for each residential property they own on or before April 30 of the following calendar year. This means that an owner's declaration in respect of a property for the 2022 calendar year would be required to be filed on or before April 30, 2023.

ALTERNATIVES FOR CONSIDERATION

Alternative: To set the tax rate of the program at 1.5%

During the consultation process in September of 2021, 18.0% of the respondents supported a tax rate of 1.5% and 52.7% supported a tax rate of 2.0% or higher. Following public input, Council could consider a tax rate of 1.5% for the program. Under this alternative, the City might realize higher revenues and might speed the pace at which unoccupied properties are rented or sold. However, a rate higher than 1.0% may become too punitive for property owners that have to pay the tax for reasons other than unoccupancy (e.g. not sending the mandatory declaration).

Financial: The potential net revenue of the program for the 2023-2028 period would be approximately $11.9 M.

Staffing: There are no additional staffing implications under this alternative.

Legal: There are no additional legal implications under this alternative.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Economic Prosperity and Growth
Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities
Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report FCS21017(c) – Residential Vacant Unit Tax Program Framework