

Authority: Item 4, General Issues Committee Report 23-004 (FCS21017(c))
CM: November 22, 2023 Ward: City Wide
Written approval for this by-law was given by Mayoral Decision MDE-2023 010
dated November 22, 2023

Bill No. 215

CITY OF HAMILTON

A By-law to Establish A Vacant Unit Tax BY-LAW NO. 23-

WHEREAS section 338.1 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "**Municipal Act**"), provides that the Minister of Finance may, by regulation, designate municipalities as having the ability to pass a by-law to impose a tax in the municipality on the assessed value, as determined under the *Assessment Act*, R.S.O. 1990, Chapter A.31, as amended ("**Assessment Act**"), of vacant units that are classified in the residential property class and that are taxable under that Act for municipal purposes;

AND WHEREAS the Minister of Finance enacted Regulation 458/22, thereby designating the City of Hamilton as a municipality that may impose a vacancy tax in accordance with the Act and the applicable regulations;

AND WHEREAS at its meeting of January 25, 2023, Council directed staff to draft a by-law for the purposes of levying and collecting the residential Vacant Unit Tax, effective 2023;

AND WHEREAS section 338.2(2) of the *Municipal Act* provides that a by-law established by a designated municipality to impose a vacancy tax shall satisfy the criteria contained within that section;

AND WHEREAS section 338.2(3) of the Act further provides that a by-law established by a designated municipality to impose a vacancy tax may establish additional requirements as Council considers appropriate;

AND WHEREAS subsections 425(1) and 429(1) of the *Municipal Act*, authorize a municipality to pass by-laws providing that a person who contravenes a municipal by-law is guilty of an offence and to establish a system of fines for offences under a by-law;

AND WHEREAS section 434.1 of the *Municipal Act, 2001*, S.O. 2001, c.25 provides that a municipality may require a person, subject to such considerations as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that person has failed to comply with a by-law of the municipality passed under the *Municipal Act, 2001*, S.O. 2001, c.25;

NOW THEREFORE, the Council of the City of Hamilton hereby enacts as follows:

PART 1 – TITLE AND DEFINITIONS

Short Title

1. This By-law may be referred to as the “Hamilton Vacant Residential Unit Tax By-law” or the “Vacant Residential Unit Tax By-law”.

Definitions

2. In this By-law:

“**Administrative Penalty**” means any administrative penalty pursuant to the City of Hamilton’s Administrative Penalties By-law 17-225, as amended or replaced;

“**Assessment Act**” means the *Assessment Act*, RSO 1990, cA.31, as amended;

“**By-law**” means this By-law;

“**City**” means the municipality of the City of Hamilton or the geographic area of the City of Hamilton as the context requires;

“**Council**” means the Council of the City of Hamilton;

“**CVA**” means the assessed value of the Residential Property, as determined under the *Assessment Act* for the Taxation Year.

“**Declaration**” means the annual declaration to be made in respect of every Residential Unit by its Owner as required in this By-law in the form prescribed therefor by the Program Administrator;

“**Declaration Due Date**”: the 31st day of March of the year following the Vacancy Year in respect of which the Declaration is made;

“**Late Declaration Cut-off Date**”: the 30th day of April of the year following the Vacancy Year in respect of which the Declaration is made;

“**Deemed Vacant Unit**”: A Residential Unit will be deemed a vacant unit:

A. If an Owner fails to:

- (1) make the Declaration required under this By-law prior to the Late Declaration Cut-off Date; and/or
- (2) provide information or evidence demanded by the City pursuant to this By-law.

“**Director**” means the City’s Director of Financial Planning, Administration and Policy and their designate or successor;

“Exemption” means each circumstance for exemption from Tax set out in Section 11 of this By-law;

“MPAC” means the Municipal Property Assessment Corporation;

“Notice of Tax” means a notice issued to the Owner levying Tax on a Vacant Unit pursuant to this By-law, and includes a tax bill;

“Occupant” means any person occupying a Residential Unit, with the permission of the Owner, including without limitation an Owner and a Tenant;

“Owner” means the registered legal owner of a Residential Unit;

“Payment Date” means the date as indicated on a Notice of Tax;

“Principal Residence” means a Residential Unit in which a person is ordinarily resident. A person may only have one Principal Residence, but a Residential Unit may be the Principal Residence of more than one person;

“Principal Resident” means a person who occupies a Residential Unit as a Principal Residence;

“Program Administrator” means a City employee responsible for the administration and enforcement of this By-law;

“Residential Property” means a property or a portion of a property that is classified in the residential property tax class, categorized in one of the property codes set out in Schedule “A” and taxable under the *Assessment Act*;

“Residential Unit” or **“Unit”** means a dwelling unit as indicated on the assessment roll for the Residential Property;

“Tax” means the tax imposed by this By-law including all penalties, fees, charges and interest that are or may be added to such a tax under this By-law;

“Taxation Year” means the year following the Vacancy Year;

“Tenant” means a person who occupies a Residential Unit pursuant to a written lease or sublease, respecting possession of the Residential Unit for a consecutive term of at least 30 days;

“Vacant Unit” has the meaning described in section 4 of this By-law;

“Vacancy Year” means the calendar year for which the vacancy status of the Residential Unit is determined.

PART 2 – TAX FOR VACANT UNITS

3. All Owners of a Residential Unit shall submit an annual Declaration to declare the vacancy status of each Unit.

Vacant Unit

4. A Residential Unit is a Vacant Unit if for more than 183 days in a given year, it is not occupied for residential purposes by one or more Occupants and it does not fall under one of the exemptions listed in Section 11 of this By-law.

Vacant Unit Tax

5. The Tax shall be imposed on every Residential Unit that is a Vacant Unit or Deemed Vacant Unit in accordance with this By-law.
6. The Tax shall be levied at a rate of one percent (1%) of the CVA for each Vacancy Year.
7. Every Owner of a Vacant Unit and every Owner of a Deemed Vacant Unit shall pay the Tax on or before the Payment Date.
8. For properties that have more than one Unit, the CVA will be proportioned equally amongst the number of Units as indicated in the assessment roll and the Tax will be applied on the -Residential Units that are Vacant Units.
9. The Tax will be added to the applicable tax roll and collected in the same manner as real property taxes.
10. If the CVA of a Residential Property is changed after the assessment roll is returned, the applicable Tax for that Residential Property will be adjusted to reflect the revised assessed value unless the change was the result of a notice issued under sections 32, 33 or 34 of the *Assessment Act*.

Exemptions

11. Notwithstanding the above sections, no Tax is payable by an Owner in respect of a Vacant Unit if any of the following circumstances apply:
 - (a) **Principal Residence:** The Residential Unit is the Principal Residence of the Owner;
 - (b) **Death of an Owner:** The Residential Unit was unoccupied for more than 183 days because of the death of the Owner. This exemption applies to the year of death plus one subsequent year after the year of death only.

(c) **Major Renovations:** The Residential Unit is undergoing repairs or renovations and the following conditions have been met:

- i) occupation and normal use of the Residential Unit is prevented by the repairs or renovations for at least 183 days of the Vacancy Year; and
- ii) all requisite permits have been issued for the repairs or renovations.

(d) **Sale of the property:** legal ownership of the Vacant Unit has been transferred to an arm's length transferee in the Vacancy Year;

(e) **Resident in a Care Facility:** the Principal Resident of the Vacant Unit is residing in a hospital, long term care or supportive care facility for a period of an aggregate of at least 183 days during the Vacancy Year;

(f) **Court Order:** a court order is in force which prohibits occupancy of the Vacant Unit for at least 183 days of the Vacancy Year.

12. If a Residential Unit is a Deemed Vacant Unit, it is taxable under this By-law notwithstanding the exemptions.

PART 3 – DECLARATION AND DEEMED VACANCY

Owner Declarations

13. On or before January 31st of the year following the Vacancy Year, the Program Administrator shall cause to be delivered to each Owner by mail or by any other means, or to be made available on-line through a publicly accessible website, a Declaration form and instructions for completion and submission of the completed Declaration either by mail or on-line or by any other format provided by the Program Administrator.

14. On or before the Declaration Due Date, every Owner, or authorized representative of the Owner, shall make a Declaration to the City for each Residential Unit of which they are an Owner, advising the City, in respect of the Vacancy Year, whether the Residential Unit was:

- (a) a Vacant Unit; and
- (b) whether the Vacant Unit was subject to an Exemption.

PART 4– ASSESSMENT AND COLLECTION

15. Following the Late Declaration Cut-off Date, the Program Administrator shall review each Declaration received pursuant to this By-law, determine the Tax payable in respect of each Vacant Unit and each Deemed Vacant Unit for the Taxation Year, and issue a Notice of Tax to the Owner setting out the amount of Tax levied and the Payment Date.
16. The Program Administrator shall make a further determinations of Tax payable under this By-law, together with any interest imposed thereon, and shall mail a notice of such taxes to the Owner, if the Program Administrator finds that the Tax should have been issued and was not issued for a Vacant Unit or a Deemed Vacant Unit for one or more of (i) the Vacancy Year, and (ii) the two years preceding the current Vacancy Year.
17. The Program Administrator may determine or redetermine any Owner for any Tax payable by the Owner under this By-law for the current Vacancy Year and the last two preceding years, except that where the Program Administrator establishes that an Owner has made any misrepresentation that is attributable to neglect, carelessness or willful default or has committed any fraud in supplying any information under this By-law, or in omitting to disclose any information, then the Director may determine or redetermine, at any time and for any period that the Director considers reasonable, the Tax payable by such Owner.
18. Where it appears from an inspection, audit or examination of the books or account, records or documents of any person that this By-law has not been complied with, the person making the inspection, audit or examination shall calculate the Tax payable in such manner and form and by such procedure as the Program Administrator considers adequate and expedient, and the Program Administrator shall determine the Tax payable.
19. The Program Administrator shall send by mail or registered mail or deliver by hand a Notice of Tax to the Owner at the Owner's last known address or at the address of the Residential Unit, and the notice shall provide the Tax payable by the Payment Date.
20. Liability to pay any amount under this By-law is not affected by an incorrect, incomplete or omitted determination by the Program Administrator.
21. The Program Administrator is not bound by any information delivered by or on behalf of a person responsible for the payment of Tax under this By-law and may, notwithstanding any information that has been delivered or if no information has been delivered, determine the Tax payable.

22. A determination of Tax, subject to being varied or vacated on a complaint or appeal and subject to a redetermination, shall be deemed to be valid and binding despite any error, defect or omission in the determination or in any proceeding related to it.
23. The imposed Tax is payable within the time required by the Notice of Tax regardless of whether a complaint or appeal of the determination of tax is made.

PART 5– INTEREST AND FEES

24. The Tax, or any portion thereof, which is due and payable and remains unpaid is considered a lien on the property and will be subject to the same penalty and interest as real property taxes, pursuant to City of Hamilton By-law 13-136, a By-law to Impose Late Payment Charges for Non-Payment of Taxes, as amended or replaced.
25. Penalties and interest levied for failure to pay the Tax in accordance with this By-law, will be collected as real property taxes and added to the tax roll for the property, pursuant to the applicable provisions of the *Municipal Act, 2001*.
26. Owners who submit a Declaration after the Declaration Due Date and on or before the Late Declaration Cut-off Date, will be charged a Late Declaration Fee outlined in the City's User Fees and Charges By-law, as amended or replaced annually by Council.
27. All administrative fees to be imposed under this By-law are as approved from the City's Council from time to time and included in the User Fees and Charges By-law, as amended or replaced.

PART 6 –COMPLAINT PROCESS

28. A complaint regarding the decision of the Program Administrator to impose the Tax ("Notice of Complaint") may be submitted by an Owner who has been charged the Tax, or the Owner's authorized agent ("Complainant").
29. The Notice of Complaint shall be submitted to the Program Administrator in any form approved by the Program Administrator, on one or more of the following grounds:
 - (a) The Owner did not submit a Declaration of the occupancy status of the Residential Property and a Residential Unit was Deemed a Vacant Unit;
 - (b) The Owner made an error or omission in completing the Declaration which resulted in the imposition of the Tax by the Program Administrator;
 - (c) The Residential Unit was found to be a Vacant Unit through a City audit; and/or
 - (d) An error or omission on the part of the City resulted in the imposition of the Tax.

30. A Notice of Complaint may only be submitted within 60 days after the billing date on the Notice of Tax.

31. The Notice of Complaint shall include the following information:

- (a) Identify the Residential Unit in respect of which it is made;
- (b) Include the full name of the Complainant and a telephone number or e-mail address at which the Complainant may be contacted during regular business hours;
- (c) Indicate whether the Complainant is the Owner or the authorized representative of the Owner, of the Residential Unit to which the complaint relates;
- (d) If the Complainant is the authorized representative acting on behalf of the Owner, include information regarding the authority to act on behalf of the Owner and/or written authorization from the Owner;
- (e) State the grounds on which the complaint is based;
- (f) State why the Residential Unit should not be subject to the Tax based on the grounds of the complaint;
- (g) Provide supplementary information and evidence to substantiate the grounds for the complaint; and
- (h) Any other information required by the Program Administrator as determined from time to time.

32. A Notice of Complaint under this section shall be served by being filed online, being sent by electronic communication, registered mail addressed to the Program Administrator or by such other method of services as the Program Administrator may determine from time to time.

33. Upon receipt of a Notice of Complaint, the Program Administrator may require the Complainant to provide any of the information or documentation described in Part 8 (Audit and Inspection) and failure to provide the required information within the time period specified in the demand will result in a dismissal of the complaint.

34. Upon receipt of the information required under Section 33, or if no information is required under Section 33, the Program Administrator shall reconsider the Tax and confirm, vacate or vary the Tax determination and shall notify the Complainant in writing of the action taken (the "Notice of Determination").

35. If the Complainant is successful, the City will rescind, fully or proportionally as required, the Taxes and the fees and charges related to the Tax within 120 days of the date of the Notice of Determination and issue any applicable refunds in accordance with the provisions of this By-law.

PART 7 – APPEAL PROCESS

36. A Complainant may appeal the Notice of Determination by serving a notice of appeal to the Director (“Notice of Appeal”) within 60 days of the date of the Notice of Determination.
37. A Notice of Appeal shall include the following information:
- (a) Identification of the Residential Unit in respect of which the request is made;
 - (b) The full name of the Complainant and a telephone number or e-mail address at which the Complainant may be contacted during regular business hours;
 - (c) Whether the Complainant is the Owner or the Residential Unit to which the appeal relates, or an authorized representative acting on behalf of the Owner;
 - (d) If the Complainant is an authorized representative acting on behalf of the Owner, include information regarding the authority to act on behalf of the Owner and/or written authorization from the Owner;
 - (e) State the grounds on which the appeal request is based;
 - (f) State why the Residential Unit should not be subject to the Tax based on the grounds of appeal; and
 - (g) Provide supplementary information and evidence to substantiate the grounds for the appeal.
38. The Complainant is entitled to raise by way of appeal only those issues raised in a Notice of Complaint regarding the Notice of Determination being appealed.
39. Notwithstanding the above, the Director may review fresh evidence or new issues if under the circumstances the Director deems it fair to do so.
40. A Notice of Appeal shall be served on the City by being sent by registered, regular mail, or electronic communication, addressed to the Director or by such method of service that the Director may determine from time to time, in the form prescribed by the Director.
41. The Director shall review the Notice of Appeal and make a decision.
42. The Director may dispose of an appeal by allowing or dismissing it, in whole or in part, and shall provide a written decision, with reasons, to the Complainant (the “Final Determination”) by mail or electronic communication.
43. The Director’s decision regarding the appeal is final.

44. If the Complainant is successful, the City will rescind, fully or proportionally as required, the Taxes and the fees and charges related to the Tax within 120 days of the date of the Final Determination and issue any applicable refunds in accordance with the provisions of this By-law.

PART 8 – AUDIT AND INSPECTION

45. The Program Administrator shall perform regular audits to ensure compliance with the By-law and provide periodic updates/reports to Council on compliance levels and audit findings.
46. The Program Administrator shall have the right to perform audits of any Residential Unit to ensure compliance with this By-law, for the relevant Vacancy Year and the two years preceding the relevant Vacancy Year.
47. The Program Administrator may conduct an audit to verify that the Residential Property continues to meet the requirements set out in this By-law, the information provided in the Declaration is accurate, and the property is, in fact, occupied. For the purposes of this audit, the Program Administrator may request additional information, as further described in the Part 8 and may inspect the property pursuant to its authorities under this By-law and the *Municipal Act, 2001*.
48. Every Owner shall retain all records and documents in respect of the occupation of, and in respect of any applicable exemption related to the Residential Unit for a period of no less than three years.
49. The Program Administrator may, for any purpose relating to the administration or enforcement of this By-law, serve on any Owner and any Occupant personally, by electronic communication, registered mail or by courier service, a written demand for information and/or evidence the Program Administrator considers necessary to determine compliance with this By-law for a period of up to two years following the relevant Vacancy Year.
50. The information or evidence required by the Program Administrator pursuant to this By-law may include but is not limited to:
- (a) Copies or certified copies of:

- i) Ontario vehicle registration and vehicle insurance documentation of any occupant and Owner;
- ii) Government-issued personal identification, including without limitation, driver's license and Ontario Identity Card of any occupant and Owner;
- iii) Income tax returns and income tax notices of assessment of any occupant and Owner;
- iv) Lease agreements for the Residential Property;
- v) Death certificate;
- vi) Employment contracts, pay statements or records of employment of any occupant or Owner;
- vii) Verification of residence in hospital, long term or supportive care facility in respect of an occupant or Owner,
- viii) Court orders prohibiting the rental of the Residential Property;
- ix) Insurance certificates for homeowners or tenants' insurance;
- x) Building permits;
- xi) Agreement of Purchase and Sale; and
- xii) Title Transfer from Land Registry Office.

(b) Statutory declarations or affidavits regarding the status of the property

Non-Compliance

51. As a result of the audit, if the Program Administrator has determined that the Residential Property has a Vacant Unit, the Owner will receive a Notice of Tax and the Owner shall pay the Tax on or before the Payment Date.
52. If the Program Administrator determines that an Owner of a Residential Property has not complied with the requirements of an audit conducted under this By-law, additional fees and/or fines and penalties as applicable may apply under this By-law.

PART 9 – ADMINISTRATION AND ENFORCEMENT

Program Administrator and Director's Powers

53. The administration and enforcement of this By-law is assigned to the Director and the Program Administrator who shall perform all of the functions conferred upon them by this By-law.
54. In administering this By-law, the Program Administrator and/or the Director may issue such interpretation bulletins and guidelines as they, from time to time, determine necessary or advisable.

55. The Program Administrator and/or the Director may approve the use and format of forms for any purpose of this By-law and the forms may provide for such information to be furnished as the Program Administrator and/or Director may require for the enforcement and proper administration of this By-law.
56. The Director and/or Program Administrator are not bound by any information delivered by or on behalf of a person responsible for the payment of Tax under this By-law and may, notwithstanding any information that has been delivered or if no information has been delivered, determine the Tax payable.

Powers of Entry

57. A Program Administrator may inspect a Residential Unit to confirm or determine the status of a Residential Unit and whether the unit is subject to the Tax. The Program Administrator will first send a letter to the Owner at the address appearing on the real property tax roll, advising the time and date of the inspection.
58. A Program Administrator may enter upon land at any time in accordance with section 436 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) this By-law;
 - (b) a notice issued pursuant to this By-law.
59. For the purpose of an inspection carried out under this By-law, a Program Administrator may:
- (a) require the production of documents or things relevant to the inspection;
 - (b) review and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection;
and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection.

Penalties and Offences

60. No person shall:

- i) Fail to provide the information or submit the evidence in the form and within the time stipulated by the Program Administrator and/or Director;
- ii) hinder or obstruct or attempt to hinder or obstruct any person exercising a power or performing a duty under this By-law;
- iii) make, participate in, assent to or acquiesce in the provision of false information in a declaration, statement, affidavit, application or other document prepared, submitted or filed under this By-law.

61. Every person who contravenes any provision of this By-law is liable to pay to the City an Administrative Penalty in the amount specified in the Administrative Penalties By-law No. 17-225, and shall follow the procedures for payment, screening reviews and hearing reviews as outlined in the City's Administrative Penalty By-law. If a person is required to pay an Administrative Penalty, the person shall not be charged with an offence in respect of the same contravention.

62. Every person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine, and such other penalties, as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, and the *Municipal Act, 2001*, as each may be amended from time to time.

63. In addition to Section 62, every person who is charged with an offence for a contravention of any provision of this By-law, by the laying of an information under Part III of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, is guilty of an offence and on conviction is liable to a minimum fine of \$500 and a maximum fine of \$10,000.

General

64. Schedule "A" attached hereto shall be and form a part of this By-law.

65. In this By-law, a reference to an Act, regulation or by-law, is to that Act, regulation or by-law as it is amended or replaced from time to time.

66. If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the stated intention of Council that the remainder of this By-law shall continue to be in force.

67. This By-law shall be deemed to have come into force and effect on January 1, 2023.

PASSED this 22 day of November, 2023.

A. Horwath
Mayor

J. Pilon
Acting City Clerk

Schedule “A” – Eligible Property Codes

PROPERTY CODE	DESCRIPTION
301	Single family detached (not on water)
302	More than one structure used for residential purposes with at least one of the structures occupied permanently
303	Residence with a commercial unit
304	Residence with a commercial/industrial use building
305	Link home - homes linked together at the footing or foundation by a wall above or below grade
309	Freehold townhouse/row house - more than two units in a row with separate Ownership
311	Semi-detached residential - two residential homes sharing a common centre wall with separate Ownership
313	Single family detached on water - year round residence
322	Semi-detached residence with both units under one Ownership - two residential homes sharing a common centre wall
332	Typically a Duplex - residential structure with two self-contained units
333	Residential property with 3 self-contained units
334	Residential property with 4 self-contained units
335	Residential property with 5 self-contained units
336	Residential property with 6 self-contained units
350	Row Housing, with 3 to 6 units under single Ownership
360	Rooming or boarding house - rental by room/bedroom; tenant(s) share a kitchen, bathroom and living quarters
366	Student housing (off campus) - residential property licensed for rental by students
370	Residential condominium unit
471	Retail or office with Residential Unit(s) above or behind – less than 10,000 s.f. gross building area (GBA)
473	Retail with more than one non-retail use
476	Commercial condominium (live/work)