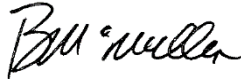




# INFORMATION REPORT

<b>TO:</b>	Mayor and Members General Issues Committee
<b>COMMITTEE DATE:</b>	January 17, 2024
<b>SUBJECT/REPORT NO:</b>	Vacant Unit Tax Program - Update (FCS21017(d)) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Gloria Rojas (905) 546-2424 Ext. 6247
<b>SUBMITTED BY:</b>	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department
<b>SIGNATURE:</b>	

## COUNCIL DIRECTION

**At its meeting on December 13, 2023, Council approved the following motion:**

That staff be directed to prepare an Information Report to the General Issues Committee meeting of January 17, 2024, that includes the following information:

- (i) Implications, financial, staffing, legal, resident outreach and otherwise, of voting against the 2023 Hamilton Vacant Residential Unit Tax By-law;
- (ii) The ease of use and options that were planned for completing a declaration online or on printed paper to be mailed or dropped-off at select Hamilton locations;
- (iii) The communication and public education plan developed on the Vacant Residential Unit Tax for residential property owners;
- (iv) Opportunities and limitations of using information from utility bills to assist in determining if residential units are vacant including but not limited to risk management practices and requirements from the *Municipal Act*, the *Municipal Freedom of Information and Protection of Privacy Act* and other legislation; and

- (v) Confirmation that Hamilton not-for-profit housing providers are exempt from the Vacant Residential Unit Tax and the strategy to effectively communicate that exemption.

## **INFORMATION**

### **Implications of not Passing the Vacant Unit Tax (VUT) By-law in 2023**

#### Legal implications

Part IX.1 of the *Municipal Act, 2001* requires that an annual by-law be passed in the year in which the Vacant Unit Tax applies stating the tax rate, definition of a vacant home, exemptions, rebates, as well as, audit and inspections powers. Therefore, the immediate implication of Council's decision to not pass the VUT By-law in 2023 is that the tax cannot be charged in 2024 based on the property's occupancy in 2023.

#### Staffing implications

Following Council's approval on June 8, 2022 of the recommendations to implement the program (Report "Vacant Home Tax in Hamilton" FCS21017(b)), staff started the implementation of the Residential Vacant Unit Tax Program which was a large and significant undertaking. In preparation for the By-law and the administration of the program, the Financial Planning, Administration and Policy Division (FPAP) worked and / or consulted with staff from the following sections / divisions in the organization:

- Legal Services
- Taxation
- Information Technology
- Customer Service
- Communications
- Records and Freedom of Information
- Procurement
- Office of the Auditor General
- Municipal Law Enforcement
- Building
- Housing

External consultation was also conducted with the Ministry of Finance, the cities of Toronto, Ottawa and Vancouver.

Not all departments in the City keep a record of the time spent on a particular project. As a result, there is not a complete account of all the hours that staff has worked in the implementation of the VUT. However, it is estimated that during 2023 staff from the Information Technology Division of Corporate Services worked approximately 1,000 hours on the project (equivalent to \$59 K) and the project lead in the Financial Planning, Administration and Policy Division of Corporate Services worked approximately 650 hours (equivalent to \$52 K).

A total of 16 full-time employees (FTE's) were approved for the program's administration and support. In anticipation of the program launch on January of 2024, a Supervisor had been hired internally and the recruitment process for customer service representatives and analysts was in progress. The active recruitments have been cancelled. As the Supervisor position was hired internally the successful candidate was able to be returned to their original position.

#### Financial Implications

The implementation costs of the VUT were initially estimated at \$2.6 M. These costs included administrative staff for a portion of 2022 as the initial plan was to set the program to begin in 2023 based on 2022 occupancy. Since the implementation was postponed to begin in 2024 based on 2023 occupancy, approximately \$800 K of the initial estimate was no longer needed.

As of December 31, 2023, total project costs are \$403 K as follows:

- Promotional / educational material \$221 K
- Consulting \$71 K
- Salary and wages \$111 K

As previously mentioned, only a portion of the salary and wages was charged to the project. Some staffing costs related to the VUT implementation were absorbed by the respective departments and are not reflected in the total of \$403 K. These costs would represent opportunity costs as staff would have been working on other initiatives if not assigned to VUT implementation.

Additional expenses were to be incurred late in December of 2023 and January of 2024 for software licences, mailout of the notice to declare, the call to action campaign and staff set up, among others. As a result of Council's decision not to proceed with a VUT, and notwithstanding the tight timelines, staff were able to not proceed with these actions and therefore the expenses were not incurred.

Implementation costs were approved to be borrowed from the Investment Stabilization Reserve and were to be repaid by program revenues. As these revenues will not be realized staff will be recommending through a future report proceeding with funding these costs through reserve funding.

Finally, staff had estimated the gross revenue for the first year of the program to be between \$3.4M and \$4.3M based on 880 and 1,135 vacant properties respectively, at an average assessment of \$381,000 (2021 amount) and a tax rate of 1.0%. Net revenues after operating expenses and repayment of the internal loan were to be transferred to a new Affordable Housing Reserve to support affordable housing initiatives. Without program revenues, the Affordable Housing Reserve will not receive any funds.

#### Housing Implications

The proposed Vacant Unit Tax was one of the measures meant to address the ongoing affordable housing crisis in Hamilton by creating a disincentive for keeping properties vacant. Initial projections indicated that after the first year, 20% of the properties that were vacant (approximately 230) would have become occupied increasing the supply and affordability of housing. In the absence of the incentive to occupy the vacant units, it is hard to predict if and how many vacant units will be made available for occupancy in the short time.

#### Other implications

The implementation of the VUT program was a high priority for staff across the organization and resources were deployed from other initiatives to support this implementation. Some initiatives that were related to the VUT will be paused, re-evaluated or will have to be re-worked. For example, the Customer Contact Centre for the VUT (see below for details) was going to be used as a pilot project for Cloud telephony and the Request for Proposal for Printing Services for Utility, Taxation and Vacant Unit Tax Billings will have to be updated.

#### Planned Declaration Methods

In order to make the declaration process easy and accessible for the residential property owners, staff had prepared several alternative methods to submit declarations.

A notice to declare with instructions on how to do the declaration was scheduled to be mailed to the registered address of all residential properties the first week of January 2024. This letter contained the roll number and access code needed to do the declaration, instructions on how to do the declaration online and a phone number set up exclusively for the program. For property owners who inadvertently disposed of the letter, the roll number and access code required for the declaration could be found in the property tax bill. Property owners could also have contacted the City to receive the access code by mail. A copy of the notice to declare is included in Appendix “A” to Report FCS21017(d).

A declaration portal was prepared in the City's website. Based on other municipalities' experience, this was the most efficient method in terms of costs, administration and reliability to receive declarations. The online declaration process was designed to be completed not requiring substantial effort and did not require the input of any personal information. Testing was conducted in the week of December 4, 2023 using a group of testers who had not been involved in the implementation of the VUT and therefore might resemble the experience of property owners submitting their declaration. Comments received after testing were focused on the fact that the declaration process was easy, user friendly and fast.

Staff also set up a Customer Contact Centre fully dedicated to the VUT (CCC-VUT). The CCC-VUT was to be staffed with four full time agents who would be responding to calls made directly to the VUT line as well as calls received through the City's Customer Contact Centre (CCC). A secondary declaration portal was built in order to have the agents in the CCC-VUT take declarations over the phone for those property owners who did not have access to internet. This secondary declaration portal was a simplified version of the portal in the City's website as it did not require login by the person doing the declaration and was, therefore, a very convenient and fast option to do the declaration.

For those who preferred to fill out the declaration on a paper form, staff had also prepared a fillable form which could have been mailed to the City or dropped off at any Municipal Service Centre. A draft of the Declaration of Occupancy Status Form can be found in Appendix "B" to Report FCS21017(d). Note that the City of Ottawa did not provide a paper form in 2023 or 2024 and the City of Toronto provided a paper form in 2023 but will not provide the form in 2024.

In addition, staff at the Municipal Service Centres (MSC) were to be trained to assist property owners on the use of the existing tablets located at the MSC's to complete the declaration.

At the initial stages of the project implementation, staff considered sending the declaration form by mail. However, after consultation with other municipalities that have implemented the tax and an analysis of the costs involved, it was determined that this was the less efficient and more expensive manner to receive the declarations. The cost of mailing the form, including a return envelope, would have been approximately \$350 K plus the cost of the staff needed to input approximately 171,000 declarations in the system.

## **Communication Strategy and Customer Support**

Extensive communications on the Vacant Unit Tax program have been conducted since its approval in June 2022, including the development of a comprehensive Call to Action campaign to ensure all property owners were aware of the need to make an occupancy declaration starting in January 2024. The following summarizes the strategies and tactics carried out until December 2023 and what was planned during the declaration period:

- September - December 2022: monthly posting on City social media channels (Facebook, LinkedIn, Instagram, X)
- February - October 2023: monthly posting on City social media channels
- April 2023: Flyer mail out sent to the residential properties
- June 2023: Insert mailed with the property tax bill
- September 2023: Flyer mail out (neighbourhood mail – sent to the mailbox without an envelope)
- September - November 2023: 1-2 monthly posts on social media
- January 2024: Notice to declare letter (direct mail to the registered address on file)
- January - April 2024: Call to action campaign, including weekly to bi-weekly posts on social media
- January - April 2024: Declaration clinics on selected locations such as senior centres and community centres

The Call to Action campaign to inform the community of the required Vacant Unit Tax declaration and key deadlines was scheduled to take place from January until April 2024. The drafted campaign included tactics such as print advertising in the Hamilton Spectator, transit shelters, on HSR buses, radio advertisements across three local stations, digital (online) ads on CHCH news, Google, LinkedIn and City-owned digital boards in front of City Hall, at Gage Park and on City TV screens, on electronic billboards across Hamilton and printed posters in Municipal Service Centres, Hamilton Public Library branches, recreation centres and arenas. Messaging was also going to be continually shared organically across the City's social media channels. Internally, the promotion would also be available on the staff intranet. Appendix "C" to Report FCS21017(d) lists all the tactics that were planned for the Call to Action campaign.

In addition, with the purpose of providing support to property owners who had specific questions, staff set up a dedicated mailbox (VacantUnitTax@hamilton.ca) in April 2023 and property owners who called the City's phone line (905-546-CITY) were able to bypass the Customer Contact Agent and be directed to the Vacant Unit Tax phone line. Emails or voice messages were returned within two business days.

## **Limitations and Opportunities of other Methods to Identify Vacant Properties**

### Universal Declaration versus Self-identification

A study by KPMG titled, “A Review of Issues to be considered for the Taxation of Vacant Homes in Toronto” notes that where there are several potential methods to identify vacant properties, the most effective, efficient and practical are the universal declaration and the self-identification methods.

The full descriptive nature of the two main methods is described by KPMG as follows:

#### Universal Declaration

Under a universal declaration approach, declarations are likely to be required annually. Property owners would thus be required to declare the occupancy status of their property for the preceding calendar year. Failure of an owner to declare their property’s status after the respective notice period would result in the property being considered vacant by default, which would then trigger liability for the vacant home tax. It is believed that the potential for incurring the tax for non-reporting should be sufficient incentive to ensure the declaration is made by the property owner. In addition, substantial penalties could be in place to act as a deterrent to property owners that might consider making false declarations. This approach has been applied in Vancouver since its implementation of an Empty Home Tax in 2016.

#### Self-identification

Under a self-identification approach, property owners are expected to self-identify vacant units to municipalities for the purpose of determining liability for the vacant home tax. Unlike the universal declaration approach, the self-identification approach assumes that properties are occupied unless declared as vacant. However, similar to the universal declaration approach, significant penalties would be in place to act as a deterrent to owners of vacant properties that may be tempted to not self-identify. This approach has been applied in Melbourne, Australia since the Victorian government implemented a Vacant Residential Land Tax in 2017. Based on conversations with observers of the Melbourne Vacant Residential Land Tax, it was identified that a major limiting factor to the effectiveness of the tax was using a self-identification method. Observers have suggested that despite the high penalty, with minimal levels of enforcement, the tax has not been an effective way of reducing the number of vacant homes or increasing tax revenue. KPMG has examined the advantages and disadvantage to these methods as applied in Vancouver and Melbourne.

**Table 1: Vacant Unit Identification Methods**

Approach	Advantages	Disadvantages
Universal Declaration	Individual property owners are more directly accountable (they must claim occupancy to avoid the tax). – Larger dataset of responses allows for additional analysis – Lower evasion rate	Higher administrative effort, with significantly more forms to be processed. – More intrusive (all taxpayers must respond) – All homeowners must be aware
Self-identification	Lower administrative effort – Less intrusive to public	Owners can more easily claim ignorance of obligations. – Higher risk of avoidance – More education / public awareness required to ensure compliance (response dependent on taxpayers taking the initiative and knowing that they have an obligation) – Higher level of enforcement required

The City chose the universal declaration method for its Vacant Unit Tax program as it was the most appropriate to identify the most vacant homes in a timely and accurate manner. This is also the method chosen by Toronto and Ottawa and resulted in a large degree of participation and revenues, approximately 95% compliance in Toronto resulting in \$54 M in revenues (as of September 2023) and 99% compliance in Ottawa with a projected revenue of \$10.5 M for 2023.

#### Data from Utility Companies

Hydro or water consumption data cannot be used to determine if a property is vacant for a variety of reasons.

The City’s relationship with our electrical affiliates is covered by the Affiliate Relationship Code for Electricity Distributors and Transmitters in Ontario and information sharing about the electrical customers is prohibited, therefore, City of Hamilton staff do not have access to electricity usage for properties in the City of Hamilton.



Regarding water consumption data, a list of zero consumption accounts may not be an accurate proxy to determine vacancy as it may reflect stopped meters that have not been replaced. With respect to low usage billed accounts, there is a very large number of accounts that bill 5 cubic metres or less per month that could be reflective of properties occupied by a single occupant or that record low usage due to travel, work contracts, schooling or renovations and not reflective of vacant properties. Some properties may be vacant but still reflect usage due to minor leaks. In addition, relying on water consumption data would not capture rural properties across the City that are not connected to the water system. Overall, using water billing data as an alternative to, or in addition to, a declaration method would not result in a more accurate determination of vacant properties. It is possible that such data could assist in investigations of possible false declarations that may arise after the initial declaration period.

#### Vacant Building Registry

The Vacant Building Registry By-law No. 17-127 makes it mandatory for all property owners to register their properties with the City if they are vacant and works collectively with the Hamilton Property Standards By-law No. 10-221. The Property Standards By-law establishes the minimum standards for the repair and maintenance of vacant and / or damaged buildings, including Designated Heritage properties.

Vacant buildings are identified through public complaints and the proactive efforts of Municipal Law Enforcement, Building Services and Fire Prevention staff continually monitoring vacant buildings. A procedure and subsequent standardized form have been established where each Division can notify each other as they are made aware of any new vacant / derelict buildings (i.e., house fire, routine inspections).

The Progressive Enforcement Policy established by Licensing and By-law Services (LBS) is a fair, effective and efficient enforcement tool to compel voluntary compliance, commencing with an administrative penalty of \$300, which can escalate to fines in Provincial Offences Court as high as \$50,000 for an individual and \$100,000 for a defendant corporation. The cost of the initial registration is \$1,256 plus \$328 for a one-time administration fee and \$454 for each additional vacant building at the same location with the same address. The annual renewal fee is \$928. For properties that fail or refuse to register, at least four proactive inspections are completed on the property annually with additional fees for service (FFS) in the amount of \$1,348, plus appropriate fines.

There are limitations to the use of the Registry for purposes of establishing a Vacant Unit or Home Tax.

- The following are exempt from the Registry: a use permitted under the City's zoning by-laws; a building / demolition permit has been issued; farm buildings; occupied by property owner on a seasonal basis.

- The methodology of identifying vacant buildings is limited to public complaint and the proactive efforts of the various City Departments.
- The Vacant Building Registry only applies to fully vacant buildings. It does not cover vacant units within otherwise occupied buildings.

### Negative Option Billing

Negative option billing is a business practice in which customers are given goods or services that were not previously ordered and must either continue to pay for the service or specifically decline it in advance of billing. The VUT is a tax, not a form of negative option billing.

The Federal Negative Option Billing Regulation applies to financial institutions, not municipalities. The regulations made under the *Federal Bank Act* and other federal acts apply to financial institutions, not municipalities.

Negative option billing applies to "consumer transactions," not taxes prescribed under the *Municipal Act*. The *Municipal Act* sets out the rules and authorizes a municipalities' powers for taxation.

Finally, Part IX.1 of the *Municipal Act* (Optional Tax on Vacant Residential Units), provides powers to a municipality to impose a vacant unit tax subject to being designated as a municipality that can impose the tax. O. Reg. 458/22 designates Hamilton as a municipality that can impose the vacant unit tax.

### Exemptions for Non-Profit Housing or Social Housing

The VUT did not contemplate any specific exemption for non-profit housing or social housing. However, many of these properties may not be subject to the tax based on the restrictions contemplated in Part IX.1 of the *Municipal Act, 2001* which indicates that the VUT can only be imposed on vacant units that are classified in the residential property class and that are taxable under the Act for municipal purposes. Therefore, properties owned by non-profit housing providers that are classified in the Multi-Residential or New Multi-Residential property classes are not eligible for the tax; properties in the Exempt class, such as the ones owned by CityHousing Hamilton (CHH) are not subject to property tax and consequently, the VUT would not apply to any of those properties. In addition, Hamilton's VUT program does not apply to properties classified as Cooperative Housing or as a Rooming or Boarding house.

For residential units that are eligible for the tax, the VUT program contemplated a series of exemptions for specific situations in which a residential unit may have been vacant but is not subject to the tax. Exemptions apply in the following instances:

- Principal residence
- The property was sold
- The principal resident was in care or hospitalized
- The unit is undergoing repairs or renovations
- Court order that prohibits occupancy

There are approximately 3,000 residential properties owned by non-profit housing providers and social housing providers in the City that would be eligible for the tax. While the expectation is that units are turned over within 60 days, some units may remain vacant due to lack of funding to renovate/update the units, properties are being sold, and in some cases, there are legal challenges. All of these are circumstances that are covered under the exemptions of the program or would be required to be reviewed following a Notice of Complaint.

For reference, the cities of Ottawa, Toronto and Vancouver do not have an exemption for non-profit housing for the same reasons cited above.

Should a VUT program and a VUT by-law be approved for the vacancy year 2024 or future years, staff will engage with non-profit housing providers and social housing providers on the program requirements including any exemptions.

#### **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A” to Report FCS21017(d) – Notice to declare sample letter  
Appendix “B” to Report FCS21017(d) – Declaration of Occupancy Status Form  
Appendix “C” to Report FCS21017(d) – Call to Action campaign

GR/dt