

**AFFORDABLE HOUSING TOOLKIT UPDATE**

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### I. INTRODUCTION

This paper discusses some of the potential tools and recent developments to promote affordable housing in British Columbia. The first part of this paper discusses the potential of the zoning power and recent amendments to local government enabling legislation for rental zoning and housing needs reports. The second part of this paper discusses recent developments regarding vacancy taxes implemented by the City of Vancouver and the Province.

### II. ZONING AND HOUSING NEEDS REPORTS

#### A. Inclusionary Zoning

Inclusionary zoning is a term that has been used to describe zoning regulations that require residential development to be “inclusive” by requiring affordable housing units to be included in the development. In the US, inclusionary zoning has become a widely accepted land use planning tool to ensure affordable housing units are provided in new residential developments.

In Canada, inclusionary zoning has been implemented in a more limited manner. In 2012, Manitoba amended its municipal enabling legislation to permit municipalities in their zoning bylaws to require that new residential development contain a certain percentage of units within the development to be designated as affordable housing for low and moderate income households. In exercising this authority, municipalities must define “affordable housing” or specify the manner for determining if housing is affordable housing in their zoning bylaws. In 2018, amendments to Ontario’s *Planning Act* and associated *Inclusionary Zoning Regulation* came into effect to permit municipalities to pass zoning bylaws to require affordable housing units to be included in residential developments of 10 units or more. If a municipality wishes to implement inclusionary zoning, it must undertake an assessment report to understand local housing supply and demand as well as potential impacts which might arise from inclusionary zoning. The municipality must then implement official plan policies and pass a zoning bylaw setting out where and how inclusionary zoning will be implemented.

In BC, local governments do not have the specific authority for inclusionary zoning. Under the *Local Government Act*, local governments have the authority to encourage affordable housing through various tools including the designation of affordable housing areas within zones (with the consent of the property owner) under s. 482(3), housing agreements under s. 483 and density bonuses under s. 482.<sup>1</sup> These tools, however, are voluntary in nature and do not ensure affordability within new residential development.

The only zoning power that could be characterized as a form of inclusionary zoning is the density bonus power. However, this authority is not true inclusionary zoning as it is a voluntary exchange between a developer and a local government of affordable housing units for a higher density than permitted in the zoning bylaw. It does not, and cannot, require affordable housing units to be provided in new residential developments at the base density permitted in the zoning bylaw. A broader zoning power would be needed to permit local governments to require affordable housing to be included in every new residential development. True inclusionary zoning could, however, be a potential tool in the future for local governments to promote affordable housing in British Columbia.

## **B. Rental Zoning**

In May of this year, the Province amended the *Local Government Act* by passing the *Residential Rental Tenure Zoning Amendment Act* to provide new authority for local governments to zone for rental housing. Unfortunately, the amendments did not go as far as many local governments had hoped in directly addressing the affordability component. In any event, rental zoning is a new tool that's now available for local governments to assist them in ensuring a supply of rental housing in their communities and hopefully influence the affordability of housing.

The amendments allow local governments in their zoning bylaws to limit the form tenure in a zone or part of a zone to residential tenure. The *Local Government Act* now defines "form of tenure" as the legal basis on which a person occupies a housing unit, and "residential rental tenure" as a form of tenure as such form of tenure is defined by a local government in a zoning bylaw.

Local governments can require that entire blocks, specific lots, individual buildings, or portions of individual buildings, contain a certain number, portion, or percentage of rental housing units. However, the rental zoning authority can only be used in areas where multi-family residential use is permitted.

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<sup>1</sup> For more detailed information on these tools refer to the seminar paper published by Young, Anderson: "Managing the Market: The Affordable Housing Toolkit" by Mike Quattrocchi, Francesca Marzari and Jay Lancaster (2016).

Section 535.1 of the *Local Government Act* addresses what happens when a rental zoning bylaw is introduced and properties subject to the bylaw don't conform to newly imposed residential rental requirements. When this happens, existing properties, buildings that are in the midst of the development process and have received a development or building permit, and pre-sold strata units, will be allowed to continue as non-conforming. However, when a strata corporation is wound up and the units are disposed of, the property will be subject to the new rental requirements. Furthermore, when additional units are added to a non-conforming building, the new units will be subject to the new rental requirements.

One practical result of the new legislation is that local governments may be able to limit situations where buildings that are composed entirely of rental units are demolished and replaced by buildings that are primarily made up of units for sale to private owners and not used for residential tenancies.

There are some other new provisions in the legislation as well. For instance, section 466(4) of the *Local Government Act* now holds that if a proposed zoning bylaw alters the residential rental tenure in any area, or limits the form of tenure to residential rental tenure, similar to a proposed zoning bylaw that alters the permitted use or density of any area, the local government must give notice to the owners and any tenants in occupation of all parcels, any part of which is subject of the bylaw alteration or is within a distance specified by bylaw from that part of the area that is subject to the bylaw alteration. Additionally, the legislation introduces new restrictions on variances, providing that a development permit, development variance permit, heritage alteration permit or board of variance order must not vary the application of a zoning bylaw in relation to residential rental tenure.

Local governments may have some difficulties enforcing rental restriction bylaws. The form of tenure may not be evident from the exterior or interior of the unit. Furthermore, as noted above, the legislation does not directly address affordability, but local governments concerned with affordability issues can hope that if they use this new power to create more rental stock, the rules of supply and demand will take effect, and rental prices will fall (or, at the very least, stop rising).

### **C. Housing Needs Reports**

Also, in May of this year, Bill 18, *Local Government Statutes (Housing Needs Reports) Amendment Act, 2018* was passed requiring local governments to undertake a housing needs report that is received at an open council or board meeting and published on the local government's website. Local governments must then consider the report when developing a regional growth strategy and official community plan or amending them in relation to housing matters. These requirements have not come into force yet. A housing needs report will be required 3 years after they do and must be updated every 5 years.

### III. VACANCY TAXES

In the lower mainland, the idea that housing speculation and the vacant housing created by such speculation contributes to rising house prices and rental rates has gained support over the past several years. What role speculation actually plays in driving up housing prices, and whether the rising prices have any effect on rental rates, are questions beyond the scope of this paper. What is clear, however, is that both the Province and the City of Vancouver consider that incentivizing speculating owners to turn their vacant housing into rental units will help create more rentals units, as both levels of government are implementing taxes on vacant homes. In theory, the taxes will also create a new revenue stream that can be used for other affordable housing initiatives.

#### A. Vancouver's Empty Homes Tax

In 2016, the *Vancouver Charter* was amended by the *Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act* to authorize Vancouver to impose a vacancy tax on residential properties in the City. Vancouver is the only local government in BC that has the authority to implement this kind of tax. Authority for such a tax, however, may be a potential tool in the future for other local governments to promote affordable housing in their communities.

Vancouver has adopted Vacancy Tax Bylaw 11674, which imposes the vacancy tax. Under the Bylaw, the tax rate for vacant homes in Vancouver is 1% of the homes assessed taxable value. Principal residences, which are defined by the bylaw as the usual place where an owner lives, makes their home and conducts their daily affairs, are exempt from the tax if the property is used as a principal residence by its owner, the owner's family member or friend, or another permitted occupier, for at least six months of the year. Homes that are rented for at least six months of the year are also exempt from the tax, provided the rental periods are longer than 30 days at a time.

In addition to the principal residence and rental exemptions outlined above, there are several other situations in which property owners in Vancouver are exempt from paying the tax:

- Owner in Care – The property was unoccupied for more than six months during the reference period (which is the calendar year prior to the applicable tax year) because the owner or their tenant, who had been using the property as a principal residence or occupying it as a residential tenant, was residing in a hospital or supportive care facility;
- Estate of Deceased - The property was unoccupied for more than six months during the reference period because the last registered owner is deceased and a grant of probate or administration of the estate was pending;

- Transfer of Property – Legal ownership of the property was transferred (including by conveyance, grant, or assignment) during the reference period;
- Redevelopment or Major Renovations – The property was unoccupied for more than six months during the reference period because it was undergoing redevelopment or major renovations, provided that: 1) permits had been issued for the redevelopment or renovations and work related to the permits was being carried out diligently, or 2) if the land is vacant or designated as heritage property, the owner had applied for the required permits or rezoning; and, if such permits were acquired, work related to the permits was being carried out diligently;
- Strata Rental Restriction – The property was unoccupied for more than six months during the reference period because, as of November 16, 2016, it was subject to a strata rental bylaw that prohibited rentals or restricted the number of units that could be rented, and the maximum number of rentals had already been reached;
- Court Order – The property was unoccupied for more than six months during the reference period because the property was subject to a court order, court proceeding, or a government order prohibiting occupancy;
- Limited Use Residential Property – The property was unoccupied for more than six months during the reference period because, as a result of a legal restriction, a residential building couldn't be constructed on the property; and
- Occupancy for Full-time Employment – If the registered owner of the property had a principal residence outside of Vancouver, but they occupied their property within Vancouver for residential purposes for a minimum aggregate period of six months during the reference period, provided the owner was employed full-time and their employer required them to be physically present in Vancouver.

To enforce the tax, Vancouver requires every residential property owner to submit a property status declaration every year, and these declarations may be subject to an audit by the City.

## **B. BC's Speculation and Vacancy Tax**

In October of this year, the provincial government introduced Bill 45, the *Budget Measures Implementation (Speculation and Vacancy Tax) Act* to discourage housing speculation and people from leaving homes vacant in major urban centres. The Bill has received first and second reading and is expected to be passed later this year.

The Provincial tax is separate from Vancouver's Empty Homes tax, but given that there is overlap in the regions that taxes apply to, property owners in Vancouver may be subject to both taxes.

In 2018, all non-exempt properties will be taxed at 0.5% of the property's assessed value. Starting in 2019, however, the province will tax properties of foreign owners and satellite families (individuals or spousal units where the majority of their worldwide income for the year is not reported on a Canadian tax return) at 2%. The rate for Canadians and British Columbians will remain at 0.5%.

The tax will apply to the following regions:

- Municipalities within the Capital Regional District;
- Municipalities within Metro Vancouver (excluding Bowen Island, the Village of Lions Bay and Electoral area A, but including UBC and the University Endowment Lands);
- The City of Abbotsford;
- The District of Mission;
- The City of Chilliwack;
- The City of Kelowna;
- The City of West Kelowna;
- The City of Nanaimo; and
- The District of Lantzville.

Recent amendments to the Bill indicate that mayors from affected municipalities will be part of an annual review process with the Minister of Finance to review the tax and listen to feedback from local communities. Furthermore, revenue raised by the tax will be used for housing initiatives within the communities that are part of the tax.

Reserve lands, treaty lands and lands of self-governing Indigenous Nations are exempt from the tax, as are islands that are only accessible by air or water.

A number of organizations are also exempt from the tax, including local governments, corporations owned by a local government and registered charities. Similar to Vancouver, the proposed legislation also has exemptions related to property use, death of the property owner and strata corporations that have rental restrictions, but the exemptions most relevant to BC residents are the principal residence and rental exemptions. A property is a "principal residence" if an individual resides in the property for a longer period in a calendar year than

they reside in any other place. In 2018, a property that is a principal residence or rented out for at least 3 months of the year will be exempt from the tax. In 2019, that requirement becomes more onerous, as individuals will be required to live in their home or rent it out for at least 6 months of the year. Addressing concerns about short-term rentals, the proposed legislation provides that rentals for less than a month do not count towards the rental calculation.

Additional exemptions to the tax include:

- Principal Residence Related Exemptions – The Provincial legislation provides a number of exemptions if an owner’s principal residence is vacant because:
  - The owner is in a residential care facility due to age, disability, addiction, illness or frailty;
  - The owner or their child are receiving medical treatment, provided the owner can prove that receiving treatment near their principal residence is impractical; and
  - The property is the principal residence of a person with a disability;
- Spousal Exemptions – Spouses may claim principal residence exemptions on two homes if:
  - They live apart for work, provided that one principal residence is at least 100 kilometers closer to the workplace than the distance between the other principal residence and the workplace, or one principal residence is on Vancouver Island and the other is not; and
  - They live apart for medical reasons and a medical condition prevents a spouse from residing in their principal residence;
- The Marriage Breakdown Exemption – The family property of married or common law couples is exempt if, as a result of the breakdown of their relationship, the couple has separated and lived apart for at least 90 days in a tax year, provided they don’t reconcile; and
- Additional Exemptions – There are also additional exemptions for:
  - Owners that are moving out of BC;
  - Damaged, destroyed or uninhabitable residences;
  - Secondary residences that are periodically used by the owner, their spouse, or their child while they are obtaining medical treatment at a facility that is close to the second home;



- Newly acquired residences;
- Owners and trustees in bankruptcy; and
- Vacant land (2018 tax year only).

British Columbians with vacant second homes that don't qualify for an exemption will be eligible for a non-refundable tax credit of up to \$2,000. The practical effect of this is that British Columbians with second homes valued up to \$400,000 will, effectively, not be taxed.

Similar to Vancouver, all residential property owners in the designated taxable regions will have to submit a property status declaration every year, and these declarations may be subject to an audit.

With the proposed legislation available, we know what the provincial speculation tax is going to look like. What we still don't know is how effective the tax will be at achieving the province's goal of increasing rental stock, nor how much revenue the new tax will bring in.

#### **IV. CONCLUSION**

There are several tools that local governments can use to encourage affordable housing in British Columbia such as: the designation of affordable housing areas with owner consent, housing agreements, density bonuses and now rental zoning. There are also several potential tools that local governments could have to promote affordable housing such as: inclusionary zoning and vacancy taxes. The success of these tools in achieving affordable housing remains to be seen.

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