

From: [Levitt, Karen](#)
To: [Direct to Mayor and Council - DL](#)
Cc: [Smith, Doug](#); [City Manager's Correspondence Group - DL](#)
Subject: Council Memo - Report back on Pre-emptive Right By-law
Date: Monday, March 18, 2024 5:33:23 PM
Attachments: [PDS - Housing Policy - Pre-Emptive Right Draft Memo to Mayor & Council 10.04.23.pdf](#)

Dear Mayor and Council,

Please find attached a memo that responds to two Council motions related to the potential development of a "Pre-Emptive Right By-law" for the City of Vancouver. A Pre-Emptive Right By-law would give the City legal authority to put a hold on a property so that if that property is put up for sale the owner must offer its possible sale to the City first, before accepting an offer from the market.

In summary:

- Staff have undertaken a jurisdictional scan and interviewed staff in several jurisdictions, which helped to identify opportunities and challenges.
- Staff found that a pre-emptive right by-law is not likely to increase the equitable distribution or quantity of non-market housing, as the main barrier to achieving this is available funding to purchase properties, not the acquisition process itself.
- A new pre-emptive right by-law program would likely be legally complex and highly staff intensive.
- Staff will continue updating our property acquisition strategy and will consider a pre-emptive right by-law if economic conditions change in Vancouver.

Please let me know if you need any further information or have questions.

Thanks,
Karen

Karen Levitt, Deputy City Manager (she/her)
karen.levitt@vancouver.ca telephone

The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̍əm/Musqueam, Skwxwú7mesh/Squamish and səilwətaʔ/Tsleil-Waututh nations

MEMORANDUM

March 18, 2024

TO: Mayor and Council

CC: Paul Mochrie, City Manager
Armin Amrolia, Deputy City Manager
Karen Levitt, Deputy City Manager
Sandra Singh, Deputy City Manager
Katrina Leckovic, City Clerk
Maria Pontikis, Chief Communications Officer, CEC
Teresa Jong, Administration Services Manager, City Manager's Office
Mellisa Morphy, Director of Policy, Mayor's Office
Trevor Ford, Chief of Staff, Mayor's Office
Dan Garrison, Director Housing Policy & Regulation

FROM: Doug Smith
Acting General Manager, Planning, Urban Design and Sustainability

SUBJECT: Report back on Pre-emptive Right By-law

RTS #: N/A

This memo responds to two Council motions related to the potential development of a "Pre-Emptive Right By-law" for the City of Vancouver. A "Pre-Emptive Right By-law" would give the City legal authority to put a hold on a property so that if that property is put up for sale the owner must offer its possible sale to the City first, before accepting an offer from the market.

On July 22nd, 2022, Council approved the Vancouver Plan report recommendations with amendments. This memo is in response to amendment Q:

THAT Council direct Staff to explore a Pre-emptive Right By-law (aka Right of First Refusal By-Law) which gives the municipality the priority to purchase buildings or lands to provide more affordable housing choices equitably distributed throughout the city, and report back with opportunities and challenges related to applying this approach to Vancouver.

FURTHER THAT Staff consider the Pre-emptive Right By-law application and implementation in other cities; including but not limited to Montreal.

On November 29th, 2023, Council approved a motion titled Uplifting the Downtown Eastside and Building Inclusive Communities that Work for All Residents. This memo is also in response to Part F of the motion:

F. Accelerate Council's previous direction to explore a Pre-emptive Right by-law (aka Right of First Refusal By-law), which would give the City the priority to purchase buildings or lands for sale to provide housing choices that are equitably distributed throughout the city, and report back to Council with recommendations by Q2 2024;

FURTHER THAT this shall also include recommendations on how the City can leverage a Pre-emptive Right by-law to the benefit of the VAHEF and PEF in accordance with the mandate of the City's new Housing Development Office.

Summary of Jurisdictional Scan of the Pre-emptive Right By-law

Staff have undertaken a jurisdictional scan and interviewed staff in several other jurisdictions with pre-emptive right by-laws in both Canada and the United States. The purpose and operational models of these programs vary widely. A summary of the most relevant programs is included in Appendix A. Briefly, the jurisdictional scan found:

- The City of Montréal's by-law has been effective in helping to acquire and preserve existing affordable housing such as rooming houses, though it has high staffing requirements, and therefore for Vancouver would require significant funding and a new structure for decision making.
- The City of San Francisco's Community Opportunity to Purchase Act program, which allows pre-qualified non-profits to purchase buildings, has been effective in preserving existing affordable housing, however, they noted there is more interest in the program than there are financial resources to support it and more monitoring is needed to confirm how effective it is.

Review of Potential Opportunities and Challenges Related to Vancouver

The opportunities and challenges for a program in Vancouver are highly dependent on the purpose and type of program implemented. At a high level, the potential opportunities seem to be outweighed by the challenges as outlined below. For full considerations, see Appendix B.

- A pre-emptive right program would not create greater geographic equity of social housing in the City, as the main barrier to further property acquisition is funding, not the acquisition process. The existing acquisition process is already effective at acquiring properties we need for this purpose.
- Based on experience in other jurisdictions, staff anticipate that implementing a pre-emptive right program would have very high staffing requirements and costs to develop the program, review properties, update by-laws and communicate with the public and private industry.
- In terms of legal requirements, if the City were interested in pursuing a statute-based pre-emptive right similar to the Québec model, it would require Provincial legislation which may include amendments to the *Vancouver Charter*, the *Land Title Act* and/or the *Property Law Act*. There may be other legislation implicated by this initiative as well.

Summary

A pre-emptive right by-law is unlikely to increase the equitable distribution or quantity of non-market housing in Vancouver. The City is in a different context than other jurisdictions in that the cost of purchasing existing properties is the main barrier to doing so, not the acquisition process itself. The main challenges are the amount of funding available to purchase properties, and timely access to funding for the City and/or non-profits organizations seeking to do so. The development and implementation of a pre-emptive right by-law would be legally complex, and highly staff and resource intensive. Further, the benefits of this approach are unclear relative to

our current property acquisition process, and do not appear to justify the high effort required to implement such a program.

Staff will be developing land acquisition strategies as part of the City's new Vancouver Housing Development Office and middle-income housing initiative, and opportunities to enhance our current practices will be explored through that process.

Should you have any further questions, please direct them to Doug Smith, Acting General Manager of PDS (doug.smith@vancouver.ca) or Dan Garrison, Director of Housing Policy and Regulation (dan.garrison@vancouver.ca).

A handwritten signature in black ink, appearing to read "Doug Smith". The signature is stylized with a large, looped initial "D" and a cursive "Smith".

Doug Smith
Acting General Manager, Planning, Urban Design and Sustainability

604.829.4308 | doug.smith@vancouver.ca

Appendix A: Jurisdictional Scan Summary

Jurisdictions within Canada

The City of Montréal was the first jurisdiction in Canada to obtain the pre-emptive right in 2017. In 2018, Montréal adopted its first pre-emptive right by-law for the purposes of regional parks and broadened the scope of its powers to also include social housing in 2020. In 2022, the Province of Québec amended the Act to grant all the municipalities, intermunicipal boards and public transit authorities the power to acquire immovable property by means of a pre-emptive right.

Under Québec legislation, the pre-emptive right is statute-based and requires prior registration of the right against title to property in the province's land registry. In order to exercise the pre-emptive right, a municipality must first:

1. Adopt a by-law identifying the territory in which its pre-emptive right may be exercised and the municipal purposes for which immovables may be acquired in that manner. The pre-emptive notice must also specify the period for which the right is valid, up to the statutory limit of ten years,
2. Serve the notice of pre-emptive right to the owner of the immovable, and;
3. Register a notice of pre-emptive right in the land registry.

There are some restrictions on the pre-emptive right, including that it cannot be exercised in respect of property owned by a public body, and it cannot be exercised in cases where the sale or transfer of the property is being made in a non-arm's length transaction (e.g., for the benefit of a person who is related to the owner of the property).

The owner of an affected property must send the City a notice of intent to sell before accepting a purchase offer. The owner must state the price of the proposed sale, the conditions to which it is subject, and the name of the person who intends to purchase the property. Within 60 days of receiving this owner's notice, the City must decide whether it wants to purchase the building at the price and on the conditions stated. The City's power to exercise or waive the pre-emptive right is delegated to the executive committee, which is made up of elected council members.

As of December 2023, 23 buildings/properties have been acquired including 8 lots (land), 7 rooming houses and 2 walk-ups. Among the properties that the City analyzed, it decided not to proceed on 57 properties. Other than the pre-empted properties (land), 4 were acquired by mutual agreement. Those properties were subjected but didn't receive offers, the owners offered them by mutual agreement to the City when they received their notice.

In terms of program effectiveness, in speaking with staff from the City of Montréal, the by-law has been effective in helping to acquire and preserve existing affordable housing such as rooming houses. The program has not been used to build a portfolio of land for housing development because they have other existing and effective tools to do this, including inclusionary policies and acquisition by mutual agreement. They also noted the potential usefulness of this tool when an area is set to be redeveloped in the medium or long-term, and the City wants to ensure that it can participate in this development. In those cases, the City must act as soon as the planning process starts, in order to stay ahead of speculative investors.

Montréal's program provided other lessons, including:

- High staffing requirements, there are approximately eight full-time real estate staff, one to three part-time lawyers and two property inspectors required to analyze building offers and undertake viability studies.
- The importance of a well-defined framework for adding properties to the program. Without a clear framework, adding properties can become political and overwhelming for staff to analyze.
- The importance of long-term planning for the properties. Montréal does not plan to manage or redevelop these properties but to sell these properties to non-profit organizations at below-market value. Significantly more funding would be needed for any future redevelopment of the sites. The City is seeking this funding from other sources like the provincial and federal governments, philanthropic funds, etc. There is more available, developable land than there is financial capacity to build those new units.
- Because funding to build new units is largely insufficient, Montréal has primarily used its pre-emptive right to buy existing rooming houses and small walk-up buildings. The City has subjected more than a hundred rooming houses on its territory.
- Subjecting properties to the City pre-emptive right list stimulated the market. In some cases, receiving the notice that their property was on the pre-emptive right program list caused property owners to offer the property for sale to the City. This created the need for staff to do a full review of the property at that time and determine whether those properties were of any interest and if the funds were available for its purchase.

In the province of Québec, other cities have started adopting a pre-emptive right by-law. No other major Canadian city has a pre-emptive right by-law program at this time. However, the City of Toronto has started exploring a pre-emptive right by-law program. They noted that they would require Provincial legislative changes before moving forward with further exploration.

Jurisdictions within the United States of America

A number of states have enacted laws to preserve affordable housing by granting tenants, non-profit groups, and local housing agencies the right of first refusal to purchase and maintain affordable housing developments. These by-laws or programs are used for different purposes. In addition to the broader goal of maintaining the existing stock of affordable rental housing, some jurisdictions use these programs to prevent the conversion of rental to strata housing, or to add rental increase protections for tenants.

In 2019, the City of San Francisco introduced the Community Opportunity to Purchase Act (COPA). COPA was created to prevent tenant displacement and promote the creation and preservation of affordable rental housing. The City uses pre-emptive rights to allow qualified non-profits to purchase multi-unit rental properties to protect existing affordable units. COPA was in response to an overheated market where properties were being sold off-market and purchased by all-cash buyers, and where non-profit organizations were not able to be competitive in this process. It was also created as a tenant protection mechanism, in response to evictions and rapid increases in rent upon property sale, as a result of the State's Ellis Act.

While the City does not acquire or develop affordable housing, they do provide financing for most of these transactions as well as small building preservation grants where applicable. In order to qualify for City intervention, the non-profit must ensure the tenants meet affordability

requirements targeting 80% of Area Median Income. The COPA program applies to any multi-family property over three units, as well as vacant land, and is not registered on title. As of December 2023, 16 properties, including one vacant property, have been purchased through the COPA program, most of which have also taken advantage of the small building preservation grants.

Staff at the City of San Francisco believe the program has been effective in preserving existing affordable housing, noting it is significantly less costly to renovate and preserve affordable housing, compared to building new. However, they noted there is more interest in the program than there are financial resources to support it.

San Francisco's program provides other lessons, including:

- Ensure time requirements of the program are reasonable. Under COPA, the qualified non-profit organization has 30 days to confirm their interest in taking up the right of first refusal for a property and must get approved by COPA before this. Though they have a longer timeframe to close the transaction, 30 days is a short timeframe to complete initial due diligence and to confirm funding availability.
- Most non-profits do not have the funds to purchase the property or to do initial due diligence work. This program is heavily reliant on funding providing through granting and financing from the City. It is a first come first served program that is currently in a budget deficit. Long-term, stable funding is important to the continued success of a program.
- This program does not have a large staffing team, with only one full-time staff and three others supporting the program as part of their work. However, staff noted they are not tracking or enforcing COPA right now, and they plan to add more comprehensive monitoring and enforcement in the near future. Since COPA is not on title to the property, they are unsure how many properties are not meeting their obligations under the program at this time.

Appendix B: Key Opportunities, Challenges, and Other Opportunities and Considerations for the City of Vancouver

Key Opportunities

If there was more funding available to purchase properties through a pre-emptive right program, there could be benefits to the City and/or the non-profit housing sector. If the market changed so that properties were being sold rapidly and off-market, a program would allow the City or non-profit organizations to be competitive and made aware of opportunities. The City could then target west side low-density properties for future redevelopment to help with the goal of creating greater geographic equity of social housing buildings. However, the funding required to buy and redevelop west side properties or existing rental buildings would be high, and City staff have noted that the existing acquisition process is sufficiently effective to do this without a new program or by-law. This is similarly true for Single Room Occupancy (SRO) buildings, which many owners are interested in selling to the Province or City, but for which the existing funding is inadequate to do so.

There may also be opportunities to support non-profit housing providers to purchase properties if the program was developed with that purpose. The Provincial government has a new Rental Protection Fund (RPF) to assist non-profits in buying existing affordable rental housing, and a pre-emptive right program could be developed to align with that program. However, it should be noted that few applications have been made through the RPF for properties in Vancouver, as the funding available is not enough to bridge the large equity gap.

There are also additional Provincial programs being developed such as the BC Builds program, which a pre-emptive rights program may be beneficial to as well. Staff would have to explore this further with the province and non-profit housing providers. A key challenge for non-profits providers would be securing the funding in a short enough timeframe for a pre-emptive right by-law program to be effective.

Key Challenges

There are several considerations and potential challenges when considering the application of a pre-emptive right by-law or program in Vancouver. As mentioned in the opportunities section, consistent access to adequate funding would be needed for the City or a non-profit organization in order to make the program successful. This funding has to be quickly accessible to ensure the program would not significantly slow down or otherwise impact the private market.

Another significant consideration in creating a program is the staffing requirements. This could vary widely depending on Council direction and the goal of the program. A program similar to Montréal's where the pre-emptive right is registered on property title may result in a high number of public inquiries and lead to a high volume of properties for review. New staff would likely be required to set up the program, communicate with the public, and analyze properties for purchase so that a decision can be arrived at within a short turn-around period. A new decision-making body, potentially made up of councillors, may also be required to approve purchase decisions in place of the existing Council authority and timelines available now. However, a program without registration on title, similar to San Francisco's, would likely need fewer staff but may also be less effective.

Lastly, though staff have not consulted with private industry to date, we anticipate private landowners, and the development industry may have concerns with a program that inhibits their ability to purchase or sell properties in a timely manner. Though the program could be made narrowly focused, or with exemptions, in seeking to minimize any unwanted consequences.

Other Opportunities or Considerations

In considering the above-outlined opportunities and challenges of a pre-emptive right program, it is important to note that the City of Vancouver already has an effective acquisition process. In addition, there may be other less invasive ways for the City of Vancouver to expand this process or to further leverage this process for the City's new Housing Development Office. For example, there are real estate brokerage companies who would pursue specific properties on behalf of the City, if Council wanted to pursue certain geographies or properties beyond staff's existing ability to do so.

In terms of legal requirements, if the City were interested in pursuing a statute-based pre-emptive right similar to the Québec model, it would require Provincial legislation which may include amendments to the *Vancouver Charter* the *Land Title Act* and/or the *Property Law Act*. There may be other legislation implicated by this initiative as well. For example, the Province may also want to authorize other municipalities and other public bodies, such as the transit authority, to exercise pre-emptive rights, in which case amendments to the *Community Charter* and other governing legislation would be required.

In terms of the process for pursuing legislative changes with the Province, the Province currently requires a resolution of City council approving the proposed request for amendment of provincial legislation before it will engage in discussions with the City.