

DERELICT RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES - GRANT PROGRAM AND DRAFT POLICY

RECOMMENDATION

That the October 25, 2022, Financial and Corporate Services report FCS01244, be received for information.

Requested Council Action		Information only	
ConnectEdmonton's Guiding Principle		ConnectEdmonton Strategic Goals	
CONNECTED This unifies our work to achieve our strategic goals.		Healthy City	
City Plan Values	THRIVE		
City Plan Big City Move(s)	A rebuildable city	Relationship to Council's Strategic Priorities	Community safety and well-being
Corporate Business Plan	Transforming for the future		
Council Policy, Program or Project Relationships	<ul style="list-style-type: none">Bylaw 19519 - Residential Assessment and Supplementary Assessment Subclass BylawProblem Properties Initiative		
Related Council Discussions	<ul style="list-style-type: none">CS00896 - Problem Properties Initiative Update		

Previous Council/Committee Action

At the April 19, 2022, City Council meeting, the following motion was passed:

That Administration provide a report to Committee outlining:

- Options for definitions of “derelict” residential and non-residential properties for the purposes of creating tax subclasses, including:

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- i. A discussion of tax rate differentials for “derelict properties” subclasses, including the maximum allowable rate ratio associated with a derelict non-residential tax subclass;
 - ii. Details of an off-setting grant program, along with a draft policy, that could further incentivize redevelopment of “derelict properties”; and
 - iii. Methodology for monitoring and proving that derelict non-residential property are unoccupied for at least one year to ensure compliance with the Edmonton City Charter, 2018 Regulation
- b. An approach for increasing the demolition and/or disposition of problem properties, including but not limited to increased acquisition of properties through tax forfeiture.

Executive Summary

- Two options for defining a derelict residential subclass have been developed:
 - A narrow definition based on Alberta Health Services health enforcement orders, and
 - A broad definition based on the physical state of disrepair of the property.
- A derelict non-residential subclass is not recommended due to difficulties in establishing that properties are unoccupied, and a technical limitation on setting a higher tax rate.
- A derelict residential subclass could be paired with a grant program that would refund the higher taxes charged to the property if it is repaired, for the portion of the year it is no longer derelict.
- The tax forfeiture process rarely provides opportunities to demolish or dispose of problem properties since the taxes are usually paid before the City can acquire them.
- Under the Problem Property Initiative, the Community Property Safety Team pilot project has resulted in the securement, demolition or re-occupancy of 39 properties since April 2022, and a new integrated approach has been developed to expedite further demolitions.

REPORT

This report considers how Edmonton’s property tax system may be used to address concerns about problem properties. Problem properties are occupied or derelict unsecured properties that have a significant detrimental impact on the health and safety of those living in and/or working on the property, as well as the surrounding community.

Any problem-solving approaches using the property tax system can only be based around the physical attributes of properties themselves. Property tax cannot be used directly to address issues that may be more related to the behaviours of a property’s occupants.

The *Municipal Government Act* (MGA) and the *City of Edmonton Charter, 2018 Regulation* set out the authorities for Edmonton to create property subclasses and set tax rates for those subclasses. City Council has broad authority to create residential subclasses based on the physical characteristics of a property (including dereliction), and limited authority to create a non-residential derelict subclass. The creation of any new subclasses has legal, technical and operational considerations.

Derelict properties are related to problem properties, but these are not equivalent terms. Problem properties may or may not be derelict, and derelict properties may or may not be considered problem properties. Derelict properties are generally understood to be those that are

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in an advanced state of physical disrepair, but this is subjective. A clear definition would be required to create a tax subclass.

Defining a Residential Derelict Property Subclass

Administration has identified two potential approaches to defining derelict residential properties: a 'narrow' definition that relies on government orders that declare properties unfit for habitation, and a 'broad' definition based on the physical state of disrepair of the property.

Both definitions will incur administrative costs that are currently unfunded. Costs include maintaining the inventory of derelict properties, responding to inquiries about this new tax subclass, and defending against assessment complaints based on the tax subclass. Inquiries and complaints would likely increase considerably for properties potentially identified as derelict, and could complicate relationship challenges between neighbours. Since property owners in the city can file complaints about assessments of properties they do not own, there may also be additional complaints filed by residents seeking to have Assessment Review Boards apply the derelict status to properties they personally consider unsightly or otherwise problematic.

'Narrow' Definition

The 'narrow' definition is:

"Derelict Residential", in respect of property, means residential property that has been deemed unfit for habitation by order of a government authority.

This definition would rely on Alberta Health Services orders that declare a property unfit for habitation. These orders are placed on land titles, so it would be relatively straightforward for assessors to search titles to apply the subclass. This approach will capture a relatively small number of properties, which limits its usefulness in addressing the larger issue of problem properties. It may also capture properties that are not problem properties and may not appear to be derelict, but are considered unfit for less externally visible reasons, such as pest infestations. A derelict residential subclass based on this definition is estimated to require one full-time equivalent (FTE) to administer.

An estimated 108 residential properties in Edmonton are currently under active Unfit for Habitation or Closed for Tenant Accommodation orders.

'Broad' Definition

The 'broad' definition is:

"Derelict Residential" means a subclass of property classified as Class 1 - residential, as set out in section 297 of the Municipal Government Act, where an improvement containing residential living areas shows serious signs of neglect, is dilapidated, falling into significant disrepair, or is uninhabitable, including but not limited to properties:

- (i) that are deserted, or abandoned;*
- (ii) which are partially or fully boarded up or secured; or*
- (iii) which have been issued an order indicating the property is unfit for habitation.*

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This definition is drafted such that it can be applied based on pictures of the building exterior and verifiable orders issued by the City or Province. Instead of relying on an external designation, assessors would be required to identify candidate properties through existing processes such as review of sales listings, permits, internal reporting and inspections, and determine if the definition applies. It would capture a broader set of properties, and more directly reflects the common understanding of dereliction. However, it would also require significantly more administrative effort because assessors would be required to search for properties that meet the definition to ensure it is applied fairly and consistently. It would also capture properties that are not considered problem properties, but may be in the process of redevelopment. A derelict residential subclass based on this definition is estimated to require four FTEs to administer.

It is also important to note that a subclass defined this way may have implications outside of the intended group. Should neighbours attempt to use this tool as a way to address property owners in building aesthetics/outdoor maintenance standards, there is a risk that some residents could be inappropriately entrenched in the process. This risk will be substantially mitigated by the fact that a property can only be included in the derelict subclass by an assessor applying the definition, but it is possible that an ARB or the Court of King's Bench will overturn a decision by the assessor.

Administration has identified a list of 388 properties that may be considered candidates for a derelict subclass under a broad definition.

Further commentary on definitions

Any other potential definition would similarly be considered narrow or broad - either assessors rely on an external inventory, which means they need not search for such properties, or there is no external inventory and assessors must search for all properties that meet the definition, which will be relatively resource-intensive.

Taxing a Residential Derelict Property Subclasses

There are no legal limitations on Council's ability to set higher municipal tax rates for subclasses of residential properties, but there are technical limitations. The City's assessment data management application (called Taxation, Assessment and Collections System or TACS) is able to support the establishment of new subclasses, but it is not able to accommodate the calculation of additional tax rates to apply to these subclasses. This means that either the non-residential or residential rate would need to be applied to any new subclasses, barring significant investment in TACS. In order to create future tax rate flexibility for this and other potential subclasses, system upgrades would need to be made.

If Council proceeds with a residential derelict subclass, Administration recommends that the tax rate be made equivalent to the non-residential tax rate. Such an approach would approximately triple the tax rate for derelict residential properties.

Non-Residential Derelict Subclass

Municipalities in Alberta have narrowly prescribed authorities to create non-residential subclasses. The City of Edmonton Charter allows Council to create a derelict non-residential

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subclass, but requires that the subclass can only be applied to properties that have been unoccupied for at least one year. This poses a significant challenge because the term “unoccupied” is not well-defined and would be nearly impossible to verify. For example, a property owner wishing to avoid the higher derelict non-residential classification could simply enter their own property and take a picture with a date to provide evidence that the property was occupied at some point during the year.

The City does not have authority to define the term “unoccupied” as it appears in provincial legislation such as the Charter. With no definition set out in provincial legislation, it would be up to the Assessment Review Board (ARB), and ultimately the Court of King’s Bench, to decide whether the City’s interpretation of the term is correct. The City could take steps to make it more likely that the ARB and the Court of King’s Bench would consider a property unoccupied. For example, if City staff inspected a derelict non-residential property every week for a year and confirmed it was unoccupied, this would make it more likely that a derelict designation would be upheld upon review. However, that result would not be certain, and the benefits of applying the subclass would be unlikely to match the resources required to reduce the risk. If the ARB or courts did not uphold the subclass, taxes for properties subject to the decision would likely be reduced to the normal non-residential rate. The City would then need to find a different way to apply and support the subclass in subsequent years or abandon the subclass entirely.

There are also legal and technical limitations on how the tax rate for a potential derelict non-residential subclass could be set. The MGA requires that the highest non-residential tax rate can be no more than five times the lowest residential tax rate. Based on 2022 tax rates, this means that the tax rate for a derelict non-residential subclass could only be about 64 per cent higher than the current non-residential rate. However, technical limitations with TACS, as described above, mean that it would not be possible to set a rate higher than the general non-residential rate without significant investment.

For these reasons, Administration recommends against proceeding with a derelict non-residential subclass at this time.

Grant Program

If Council sought to pursue a derelict subclass, it may also wish to consider an offsetting grant program to further encourage owners of derelict properties to redevelop their properties. Owners of properties within a potential derelict subclass could apply for a grant if they have taken steps to improve their property to the point where it would no longer be considered derelict under the definition of the subclass. As conceived, the grant would only offset the additional taxes paid for a limited period. If, for example, a property is improved during the year and is no longer derelict, the grant would refund the extra taxes the property is charged as a derelict property for the remainder of the year, meaning that the owner only pays the derelict tax rate for the part of the year in which the property was derelict. Other criteria would also be included, such as there being no tax arrears associated with the property and no significant legal issues associated with the property or the owner.

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The program's purpose would be to incent property owners to improve their properties. It would also demonstrate that the derelict subclass is not intended as a revenue generation tool for the City.

Details of the grant program, including a policy and potential resource implications, can be brought forward with the subclass bylaw if Council chooses to proceed.

Opportunities in the Tax Forfeiture Process

The tax forfeiture process is highly prescribed in the MGA, and is designed to protect the rights of property owners while supporting municipalities in collecting unpaid taxes. The City has options to obtain the property with clear title by (1) purchasing it at the tax auction, (2) purchasing it at any point during the following 15 years, or (3) waiting for 15 years after the auction occurs.

A property with tax arrears can be put up for auction about three years after the tax payment deadline. For example, properties that have not paid their 2022 taxes as of the June 30 payment deadline could be auctioned as soon as April 2025. At any point during this period, the tax arrears can be paid and the property would no longer be part of the tax forfeiture process. Council can designate an employee to bid on properties at the auction, and if they win, the City owns the property with clear title (the previous owner has no recourse to regain possession). The reserve bid for properties at auction must be set at market value, which is determined by a contracted appraiser. Properties rarely sell at the tax auction because they cannot be sold for less than the reserve bid (plus GST), and buyers have little ability to verify the condition of the property, whether it is currently occupied, or whether the property may be contaminated or have other liabilities.

If the property is not sold at the auction, the City can become the owner at any point in the next 15 years by registering a tax forfeiture instrument on the title, though this is a qualified form of ownership. The City becomes responsible for maintaining the property and any associated liabilities (such as environmental contamination) and it becomes exempt from property taxes, but the previous owner can still regain possession by paying off the arrears. The City can sell the property or assume ownership with no restrictions by taking steps to protect the financial interests of the previous owner. This would require the City to deposit funds equivalent to the market value of the property (or the sale proceeds if it is sold) into a special account, use that account to pay for any remedial costs relating to the parcel, as well as the tax arrears and any other amounts owing to the City, then hold the remainder for the previous owner to claim for a period of 10 years, after which the funds revert to the City. This is the same process that must be followed if a property is sold at auction, whether to the City or someone else.

Alternatively, if the arrears have still not been paid 15 years after the auction, the City can take the title with no restrictions. Very few properties reach this stage of the process as the arrears are generally paid eventually.

While these options exist, relatively few problem or derelict properties become available to the City through the tax forfeiture process. Administration has compiled a list of 388 potentially derelict or problem properties based on an inventory maintained by the Residential Inspection

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Safety Compliance (RISC) Team, closure orders issued by Alberta Health Services, vacant unsecured properties identified by Fire Rescue, and the derelict adjustment applied as part of the assessment process. Of these 388 properties, only 14 have come up for tax auction in the past 15 years. Nine of these properties have subsequently resolved their arrears, leaving only five properties currently available for the City to obtain. All five are single detached houses that are considered problem properties, and one has been declared unfit for habitation by Alberta Health Services.

Increasing the Demolition of Problem Properties in Edmonton

The Problem Properties Initiative has implemented a number of processes and initiatives, including instituting the multi-agency Residential Inspection Safety Compliance (RISC) Team, the development of a longer-term approach to problem properties, and the Community Property Safety Team (CPST) Pilot. The CPST utilizes an escalating enforcement model and authorities under the MGA to order owners to secure vacant properties at their expense. The program began in April 2022, and as of August 30, 2022, eight properties have been demolished by building ownership after receiving CPST orders for securement, and two have been renovated and legally occupied. The CPST process has been directly responsible for the securement, demolition, or reinvestment of 39 high risk unsecured vacant properties. The CPST Pilot is scheduled to run until the end of October 2023, at which point a formal report will be prepared for Council.

Additionally, a more focused, unified approach to streamline the path to demolition has been designed to take bolder action in addressing situations where owners have not taken accountability for their problem properties. This process prioritizes and expedites demolitions where required. A newly formed demolition assessment and response committee, comprising members from Community Standards and Neighbourhoods, Development Services, Fire Rescue Services, and Legal Services, will evaluate potential properties for demolition referred by the internal groups or external agencies working with existing problem properties. These properties will be prioritized based on a number of standard criteria such as safety, location, and building type.

For each property where demolition is deemed necessary, a property-specific plan will be developed based on the most appropriate legislation to be used, the sequencing and timing of orders, the need for engineering reports and other expert opinions, and coordination with partner agencies. Once any appeals and challenges have been addressed, the enforcement areas will work to advance the demolitions in a timely and coordinated manner. As this new demolition process is implemented, it will be revised as necessary based on the learnings.

Budget/Financial Implications

There are several different strategies discussed in this report, and the budget implications will depend on Council direction. If Council wishes to proceed with a derelict residential subclass or an offsetting grant program, Administration would bring forward a package identifying the specific funding required through the Spring 2023 Operating Budget Adjustment process.

Claiming properties through the tax forfeiture process will also incur costs, though if this is done as part of existing City process such as the Problem Properties Initiative or the Housing

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Redevelopment Grant Program, and assuming the properties are bought after remaining unsold at the tax auction, further Council direction is not required.

Legal Implications

Section 297 of the *Municipal Government Act* allows municipalities to establish residential subclasses on any basis it considers appropriate. Despite the broad range of options in creating subclasses, the classification would need to be based on physical characteristics that relate to the property and cannot be created in such a way that is discriminatory. Classifications may be appealed to the Assessment Review Board.

The *City of Edmonton Charter, 2018 Regulation* allows Edmonton to create a non-residential derelict subclass based on a definition of 'derelict' chosen by Council, but the subclass can only be applied to properties that have been unoccupied for at least one year.

COMMUNITY INSIGHT

More than 50 internal and external stakeholders were engaged in the development of the Problem Properties Strategy, and several community members spoke to the April 11, 2022 Community Services report CS00896 Problem Properties Initiative Update. Some community members expressed concern that increased taxes may be insufficient to address the issue, though these engagements focused on the broader problem properties issue and were not specific to derelict properties. The feedback gathered was clear that the City should consider all available tools and utilize a coordinated, multifaceted approach to address these properties.

Speakers at the CPSC meeting questioned the efficacy of the potential offsetting grant program, suggesting that owners may allow their properties to fall into disrepair soon after receiving the grant.

GBA+

The actions considered in this report would directly impact the owners of derelict properties, since these properties are unlikely to be occupied. While Edmonton has taken significant steps to better understand problem properties, little demographic information is available about the ownership of these properties beyond the names on title. Some problem properties are corporately owned, making it even more difficult to identify equity implications.

However, it is also important to acknowledge that addressing derelict properties has a positive impact on the surrounding community. While derelict properties exist throughout the City, they are disproportionately located in areas that house relatively large vulnerable populations. Addressing these properties would be expected to improve the vibrancy of these communities, improving equity outcomes relative to other areas with fewer derelict properties.

A potential derelict residential subclass would be intended to bring derelict properties up to an acceptable standard rather than incent full redevelopment of the properties. This is likely to increase surrounding property values somewhat, but may not lead to the displacement that could occur with larger scale redevelopment.