City of Burnaby

Meeting October 16, 2023
File: 7800-01
COUNCIL REPORT

TO: MAYOR & COUNCIL

FROM: DEPUTY CHIEF ADMINISTRATIVE OFFICER AND CHIEF FINANCIAL OFFICER

SUBJECT: **PROPERTY TAX RELIEF PROGRAM**

PURPOSE: To obtain Council approval not to introduce a Tax Relief program for the City of Burnaby.

RECOMMENDATION

THAT staff be authorized not to introduce a Property Tax Relief program for 2024 and beyond, given concerns raised regarding Bill 28's overall effectiveness and administration of the program in its current form, as outlined in the report titled "Property Tax Relief Program" dated October 16, 2023.

CHIEF ADMINISTRATIVE OFFICER'S COMMENTS

I concur with the recommendation of the Deputy Chief Administrative Officer and Chief Financial Officer.

1.0 POLICY SECTION

This report is based the on amendments to section 198 of the Community Charter as introduced through adoption of Bill 28 by the Legislative Assembly of British Columbia.

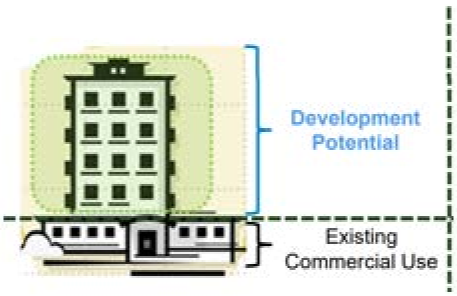
2.0 BACKGROUND

The report provides a follow-up to an information report provided to Council on February 16, 2023. The February report presented an overview of Bill 28, the work undertaken by the Province of BC and considerations for introduction of a Property Tax Relief Program. This report sets out the findings of staff with respect to the suitability of such a program for the City of Burnaby.

Bill 28 and the resulting changes to the Community Charter replaced the interim Business Property Tax Relief program introduced by the province in 2020. Under Bill 28, municipalities have the authority to grant a permissive exemption from property taxation to class 5 and 6 properties for up to a maximum of five consecutive years (timelines differs from regular permissive exemption scheme). Bill 28 sets out a limited number of eligibility criteria as follows:

- The property is Class 5 (Light Industrial) or Class 6 (Business), or both.
- Property improvements were in use as of October 31 in the preceding tax year.
- The property has a land value ratio equal to or greater than 95%; and,
- The property is not disqualified under Section 6 of the bill.

BC Assessment (BCA) will supply municipalities with a list of properties that meet or exceed the 95% threshold. This figure is an indicator of future development potential.



If the land value equals or exceeds 95% of total value, this is deemed to represent future development potential. For example, a future high-rise building.

Municipalities must set out a Tax Relief Policy. Once established, municipalities must reference the Policy in the City's Annual Financial Plan. A property is ineligible for tax relief if any portion is in Classes 2,3,4,7,8 or 9. Municipalities must make their selection of properties to receive tax relief and provide information back to BCA in time for incorporation into assessment data in March.

Once approved for tax relief, municipalities are responsible for reassessing eligibility on an annual basis.

3.0 GENERAL INFORMATION

3.1. Municipal Adoption

To date, the City of Vancouver is the only metro Vancouver municipality to have implemented a tax relief program. Other municipalities contacted by City of Burnaby staff have either ruled out introducing the program or are still waiting to see how those having adopted the program have fared. Indications are that uptake of the program by municipalities will be very limited. While the City of Vancouver are continuing their relief program, this is built on a pre-existing foundation of assessment averaging and through use of an annual declaration.

3.2. Property Selection

The legislation passed under Bill 28 does not expressly provide municipalities with the ability to stipulate additional selection criteria. However, BCA Actual Use data cannot be used without further validation by city staff. For many properties, the usage assigned by BCA does not entirely reflect what is happening on the ground, and therefore either a site visit or desktop review is required. Per Table 1 below, from the 2023 assessment roll for Burnaby, an initial set of 816 properties meeting the 95% threshold, staff trimmed the selection down to 441 properties using property usage as an indicator of suitability. 15 out of a possible 44 usage types were deemed as fitting the likely criteria for tax relief as outlined in Table 2 below. Examples of those deemed as not eligible include uses such as: "Big Box", (Costco), and "Shopping Centre Regional", (Bentall Tower 1 at Brentwood).

TABLE 1 – PROPERTY SELECTION

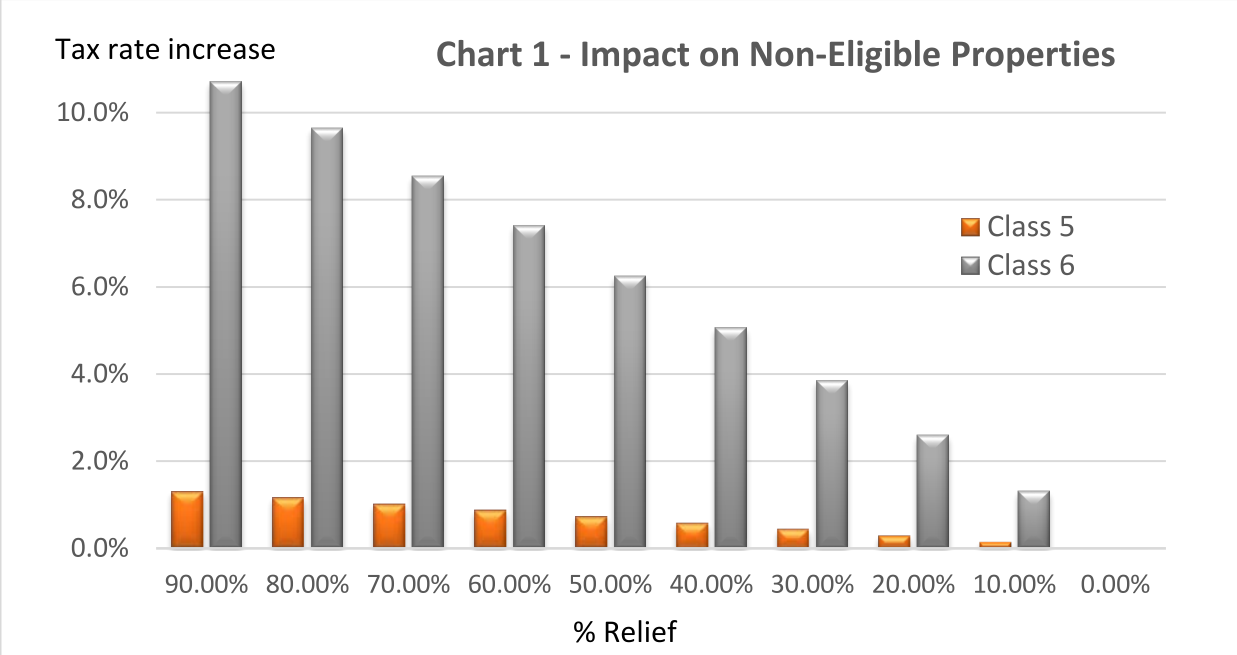
Relief Properties	Count	Total Value (Land and Improvements)
CLASS 5	14	$72,946,000
CLASS 6	427	$3,140,840,000
TOTAL	**441**	**$3,213,786,000**

TABLE 2 – ACTUAL USE CODES PERMITTED
• Automobile Paint Shop, Garages
• Commercial Strata-Lot
• Convenience Store/Service Station
• Fast Food Restaurants
• Food Market
• Miscellaneous & (Industrial Other)
• Miscellaneous (Food Processing)
• Neighbourhood Store
• Office Building (Primary Use)
• Restaurant Only
• Retail Strip
• Shopping Centre (Community)
• Shopping Centre (Neighbourhood)
• Store(S) And Offices
• Store(S) And Service Commercial

3.3. Relief Percentage

Bill 28 affords municipalities the ability to set the percentage of the property to receive a lower tax (mill) rate on the development portion of the respective property. BCA holds limited data that could be used to establish an income value for current property use. Accurate information for the actual development potential is not available. As such, the percentage of the property awarded the relief is an attempt to align relief with the development potential.

For simulation purposes staff assigned the relief mill rate to 100% of property land values for 2023, after reducing the data listing based on property usage down to 441 properties. The analysis below shows the impact that varying the relief mill rate has on those not eligible to receive the relief. A similar exercise can be undertaken by varying the percentage of land value to receive relief, or a combination of both. What the information indicates is that with each increase in relief given, a greater tax burden is passed onto the remainder of the property class. For example, if 90% relief is provided for the development potential in Class 6, then non-eligible properties in that class would see their taxes increased by over 10%. See chart 1 below.



3.4. Targeted Relief

For underdeveloped commercial properties, unrealized development potential could result in significant property tax implications. Properties with scope to be developed will grow in value over and above what would be expected from their current use. This in turn will result in significant property tax increases. For owner occupiers seeking redevelopment this may not be an issue. It is however tenants with responsibility for payment of taxes and utilities as part of their lease who are going to ultimately feel the burden of such tax increases. As such, a stated aim of the Property Assessment Strategic Review carried out by the Province in 2022 was a commitment to the development of a long-term property tax strategy for occupiers of commercial properties paying high property taxes due to development potential. Bill 28 was the outcome of the review.

Should the City of Burnaby start a tax relief program, a mechanism is required by which property owners are notified of their obligation to pass the tax relief onto their tenants. The City of Vancouver undertook a declaration process through which all properties that might be suitable for relief were contacted and asked to confirm their status. Language set out in the declaration was used to communicate this obligation. To have a robust and complete process, the City of Burnaby would need to introduce a new annual declaration process. There is currently no penalty provision within the legislation for non-compliance with the program, be it in the form of making a misleading declaration submission or failing to pass on the relief to tenants. A new declaration process would require additional administrative processes and costs to the City.

3.5. Program Effectiveness

While the goal is to provide targeted tax relief to small commercial tenants with triple net leases, or small owner occupiers, the changes to the Community Charter through Bill 28 and subsequent emphasis on municipalities to take on the role of deciding which properties are suitable for relief poses many challenges for the City of Burnaby. It is difficult to determine how a fair, efficient, and economical process could be undertaken based on the limited BCA data available, and by using an arbitrary percentage as an indicator of development potential. The current proposed process creates room for considerable challenge and disharmony, while posing a risk in the form of higher taxes for non eligible properties. Furthermore, there is no assurance that the relief will actually be passed onto tenants.

4.0 COMMUNICATION AND COMMUNITY ENGAGEMENT

Not applicable

5.0 FINANCIAL CONSIDERATIONS

Staff have undertaken a review of how a relief program may impact the overall tax levy and property classes therein. Based on current understanding, such a program does not in itself pose a risk to overall tax collection; however, as demonstrated in Chart 1, those not in receipt of relief will be required to make up for the shortfall in terms of higher tax rates.

Respectfully submitted,

Noreen Kassam, Deputy Chief Administrative Officer and Chief Financial Officer

ATTACHMENTS

Attachment 1 – Bill 28 – Property Tax Relief Legislation (2023.02.27)

REPORT CONTRIBUTORS

This report was prepared by Richard Rowley, Director Finance Revenue Services.

MEETING 2023 February 27

COUNCIL REPORT

TO: CHIEF ADMINISTRATIVE OFFICER **DATE:** 2023 February 16

FROM: DEPUTY CHIEF ADMINISTRATIVE OFFICER & CHIEF FINANCIAL OFFICER **FILE:** 7800-01

SUBJECT: **BILL 28 - PROPERTY TAX RELIEF LEGISLATION**

PURPOSE: To provide Council with an update on recently approved property tax relief legislation.

RECOMMENDATION:

1. **THAT** Council receive this report for information.

2. **THAT** Council direct staff to bring back with additional analysis in the latter part of the year in order to determine if a Tax Relief Program is suitable for the City of Burnaby.

REPORT

1.0 INTRODUCTION

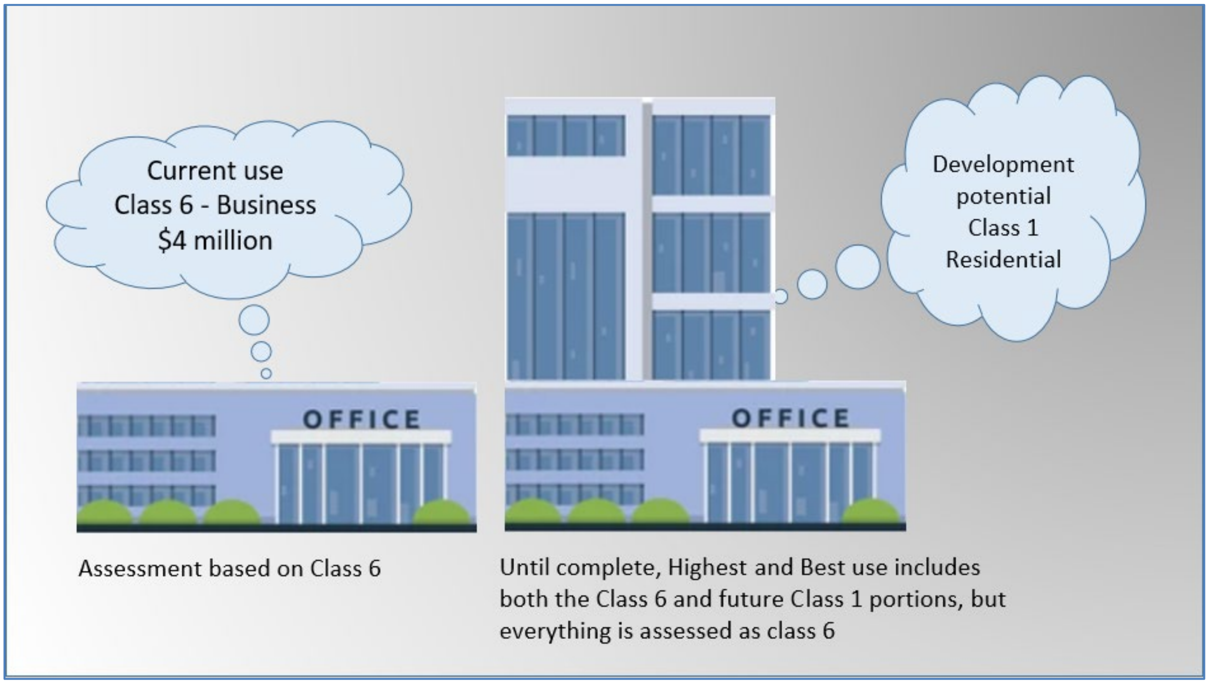
Under the Assessment Act, BC Assessment (BCA) values properties based on their "*Highest and Best Use*". The difference between Highest and Best Use and valuing property based on its current use, is the property's development potential. Development potential reflects a change to the Official Community Plan (change in zoning / land use). BCA, in recognizing Development Potential, will provide a value to additional units / buildable area and / or an alternative use that is allowable on the site. Municipalities use BCA Assessment data in order to establish tax rates for the generation of the annual Property Tax level.

For property owners holding property on land with "development potential", application of Highest and Best Use methodology can present a significant potential property tax burden. Commercial tenants with triple net leases are liable for payment of all property taxes, utilities and other charges passed down by their landlord. Tenants can therefore end up paying taxes on the future development potential of a site from which they themselves will not benefit. As development numbers continue to grow in the lower mainland, the methodology of valuing development potential, and related property taxation implications for commercial tenants with triple net lease has come into question.

2.0 HIGHEST AND BEST USE

Exhibit 1 below shows how BCA values development potential using the Highest and Best Use approach. As illustrated, while future development may relate to residential property or other property class, development potential is valued based on the current classification assigned. This therefore results in a higher mill rate and property tax charge for the incumbent tenant or owner.

Exhibit 1: Property Tax impact from Development Potential



In Exhibit 1 above, the current value of the commercial store, prior to any development potential was $4 million. Using a provisional 2023 Class 6 Municipal Tax Rate of 4.7384, Municipal taxes for the existing property would be $18,953.60. By imposing the highest and best use value, which now includes $10 million of future residential airspace units, the property now has a combined value of $14 million; however, the portion attributed to development potential is taxed as Class 6, and not Class 1, as illustrated below:

Municipal Tax Implications	Assessed Value	If taxed based on a split assessment approach	Current taxation based on BCA Highest and Best Use methodology
Current Class 6 Property	$4 million	$18,953.60	$18,953.60
Development Potential - Residential Class 1 portion	$10 million	$14,599.00 (based on Class 1 mill rate)	$47,384.00 (based on Class 6 mill rate)
Total	**$14 million**	**$33,552.60**	**$66,337.60**

(2023 provisional Municipal Class 1 mill rate = 1.4599, Class 6 = 4.7384)

3.0 BILL 28

3.1 Purpose

In 2022 March the Ministry of Finance released information to local governments regarding the work being undertaken by the Province to develop a longer term property tax strategy for commercial tenants. The Province worked with a number of municipalities through what is known as the Property Assessment Strategic Review (PASR). The focus of which was to develop a tax relief program governed by the following five guiding principles:

- Be targeted, time-limited, permissive and applicable province-wide;
- Minimize changes to the existing legislative, assessment and taxation framework;
- Minimize administrative burden and implementation complexity;
- Consider and incorporate input from consultation with key stakeholders; and,
- Consider Highest and Best Use valuation but retain tax policy incentives for development and limit revenue impacts.

The work forms the basis of Bill 28.

On 2022 October 03 the Province announced a new tax relief measure for the 2023 tax year, which replaces the interim Business Property Tax Relief program introduced in 2020 March. Under Bill 28, municipalities have the authority to grant a permissive exemption from property taxation for up to a maximum of five consecutive years (timelines differs from regular permissive exemption scheme) to properties that meet provincial eligibility criteria. Eligibility needs to be reassessed each year during the five year period.

3.2 Eligibility

Under Bill 28, Section 5, Land is eligible for relief if:

- The property is Class 5 (Light Industrial) or Class 6 (Business), or both;
- Includes improvements in use as of October 31 in the year preceding the taxation year to which the relief will relate;
- The property has a land value ratio equal to or greater than 95%; and,
- The property is not disqualified under section 6 of the bill.

3.3 Process:

The Property Tax Relief legislation works as follows:

1. BC Assessment will provide municipalities with a listing each December of potentially eligible properties (where the land value makes up 95% of the total assessment).
2. Municipalities are required to undertake a detailed (property level) analysis of the initial BCA data set to define their selection of properties to receive tax relief.
3. The chosen list of properties must then be sent back to BCA by the end of January in order for BCA to incorporate the information either as part of the Revised Roll to be produced in late March, or as a separate file.
4. A separate tax rate can then be applied to a portion of land value based on this municipal selection and Council policy on what rate should be applied.

Classes 2, 3, 4, 7, 8 and 9 are excluded from the program.

4.0 WORK REQUIRED TO IMPLEMENT A TAX RELIEF PROGRAM

4.1 Tax Relief Policy

Municipalities need to establish a Tax Relief Policy, covering the eligibility percentage (i.e. land value equal to or greater than 95% of total value) for properties to be within the program scope, any exclusions, Property Tax Mill rate reduction, and any other criteria as established by Council. This new policy will need to be referenced in the City’s Annual Financial Plan.

In undertaking data analysis, municipalities can then set their own additional criteria for reducing the number of eligible properties for relief. (Note - not specified in the legislation). Such additional criteria will need to be included in the policy document.

4.2 Setting the Amount of Relief

Municipalities must determine the amount of tax relief to grant to eligible properties. This would include the percentage of the land assessment (i.e. 0% - 100%) to which the agreed upon tax relief mill rate applies. Any reduction in property taxes for the chosen eligible listing of properties would result in higher taxation for the non-eligible properties within the same class (5 and 6). Council would therefore need to consider the extent of the tax burden shift they are comfortable with passing on to others. However, this potential tax burden shift comes without certainty that any tax relief will actually get passed on to tenants.

4.3 Review of Development Applications

Municipalities need to review how each property is currently used and establish if there are any recent development applications by the property owner, which would influence the assessment value. Given the relatively high level data provided from BCA, a review of pending and issued Rezoning, Subdivision and Building Permits would need to be undertaken for any shortlisted property in order to identify if a higher assessed value can be tied to actions undertaken from the property owner. Some municipalities are also recommending site visits as an additional step in validating property eligibility.

In principle, one would not want to grant relief to a developer when they are the reason for an increase in assessment value (i.e. rezoning has occurred for redevelopment).

4.4 Shortlisting Properties Based on Actual Use

While not expressly stated in the legislation, provincial guidance instructs municipalities that they are free to set additional eligibility criteria as required. One such area relates to current property use. The City of Burnaby will need to determine if there are any forms of current property use not be suitable for relief. For example, the following BCA Actual Use codes would not seem in keeping with the aim of the program:

- Automobile Dealership
- Big Box
- Shopping Centre (Regional)

Based on initial 2023 BCA data, staff have reduced a listing of over 800 properties down to around 442 properties. This has been achieved by removing 29 out of 44 BCA actual use codes that are proposed by staff as not suitable for inclusion in the program. In order to move forward, Council will need to endorse such an exclusion listing as part of the City's Tax Relief Policy.

5.0 RECOMMENDATION

Additional analysis and policy development needs to be completed in order to assess whether the tax relief legislation will be of benefit to the intended recipients.

Therefore, it is recommended that Council receive this report for information and that Council direct staff to return with additional analysis in the latter part of the year in order to determine if a Tax Relief Program is suitable for the City of Burnaby.

Noreen Kassam, CPA, CGA
DEPUTY CHIEF ADMINISTRATIVE OFFICER &
CHIEF FINANCIAL OFFICER

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Copied to: Chief Administrative Officer
City Solicitor
Senior Manager Legislative Services