
Residential Rental Tenure Zoning in the Capital Region

Reviewing HRC's workshop in Victoria, B.C.



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The Housing Research Collaborative (HRC) based at the University of British Columbia (UBC) organized an interactive workshop held on May 30th 2019 at the University of Victoria to discuss a new zoning tool called Residential Rental Tenure Zoning (RRTZ). Participants in the workshop included representatives from provincial and local government agencies, civic organizations, advocacy groups, private developers, independent consultants, and development industry representatives. The City of Victoria planning staff worked with HRC to identify the questions for the breakout sessions and widely advertised the workshop. The Capital Regional District also supported the workshop.

The event consisted of a series of presentations from expert panelists, followed by two rounds of facilitated small-group discussions. Penny Gurstein, Director of HRC, moderated the panel and briefly introduced RRTZ. UBC Master of Community and Regional Planning candidate, Naomi Reichstein, presented an overview of her capstone research project on RRTZ in British Columbia. Robert Batallas, Senior Planner at the City of Victoria, spoke about the City's approach to implementing RRTZ in Victoria, and David Sander, Hollyburn Properties Director, representing Landlord BC, introduced a property developer's perspective on the application of RRTZ and other tools to encourage new residential rental development.

ABOUT RESIDENTIAL RENTAL TENURE ZONING

RRTZ was introduced into British Columbia's legislation on May 31st, 2018 through the amendments made to the Local Government Act and Vancouver Charter by the Local Government Statutes (Residential Rental Tenure Zoning), Amendment Act, 2018, S.B.C. 2018, c. 26¹. In section 455, Residential Rental Tenure is defined as "a form of tenure as such form tenure is defined by a local government in a zoning bylaw", meaning that it is up to each local government to specify what constitutes Residential Rental Tenure in its locale.

The amendment adds new capabilities to Zoning Bylaws, thereby allowing zoning bylaws to "limit the form of tenure in accordance with section 481.1". Section 481.1 states:

"(1) A zoning bylaw may limit the form of tenure to residential rental tenure within a zone or part of a zone for a location in relation to which multi-family residential use is permitted.

¹See BILL 23 – 2018: LOCAL GOVERNMENT STATUTES (RESIDENTIAL RENTAL TENURE ZONING) AMENDMENT ACT, 2018: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/first-reading/gov23-1>

(2) A limit under subsection (1) may limit the form of tenure to residential rental tenure in relation to a specified number, portion or percentage of housing units in a building."

RRTZ can only be used in locations where multi-family residential is permitted, whether these are strictly residential or are within multi-use zones, and it can require that a certain number, portion or percentage of housing units in a building be rental.

However, section 481.2 specifies cases where zoning bylaws that limit the form of tenure to residential rental tenure don't affect as follows:

"(a) any lawful bylaw that a strata corporation may pass under Par 8 [Rentals] of the Strata Property Act;

(b) any lawful rule that a housing cooperative may adopt in relation to the rental housing."

RRTZ cannot overrule legal bylaws passed by strata corporations.

Section 498 of the Local Government Act states that Development Variance Permits do not apply, among other things, zoning bylaws in relation to residential rental tenure.

It is important to note that a change in owners, tenants, or occupants of a housing unit does not affect the authority to continue as a non-conforming form of tenure. Only in case of a lawful dissolution of the strata corporation (entitled to the entirety of the land and building) under the Part 16 of the Strata Property Act, the authorization to continue as a non-conforming form of tenure will be removed.

However, section 535.5 states that the Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act, on special circumstances in relation to the authorization of non-conforming forms of tenure, as well as its removal.

As outlined above, RRTZ offers a range of opportunities as well as constraints on development. Within this context the workshop was designed to gain a greater understanding of how, and in under what conditions, RRTZ would be suitable.

PRESENTATION 1: Research on Rental Zoning

Naomi Reichstein introduced the two main goals of RRTZ: The first, to preserve existing rental stock, and the second, to enable new rental supply. Current legislation in the province enables the possibility to apply RRTZ in multifamily zones and, depending on the characteristics of each project, these regulations can take effect at various scales:

- entire or partial zones or areas;
- all or some sites of a project;
- all or a determined portion of units in a site.

Moreover, current legislation also allows non-conforming land uses, which means that owners of units in existing strata buildings in RRTZ lots will maintain their right to sell their own individual units without having to meet the requirements of the new zoning. Some limitations apply to RRTZ: zoning cannot specify the type of tenant or the rental rate and, by itself, RRTZ is unable to prevent demolitions or provide affordability to the housing system.

As of May 2019, in British Columbia only the cities of Burnaby, New Westminster and Victoria have passed RRTZ bylaws. However, as of this writing, Port Moody, Richmond, Squamish and Vancouver have been exploring the feasibility of its implementation.

The application of RRTZ can take two different approaches: it can be applied to existing properties via local government initiatives through new plans, projects, or bylaws; or it can take effect for a site upon a development application by an applicant. As mentioned before, these regulations can affect properties in different ways (a portion of units in a building, some buildings on a site, or an entire site), regardless of their existing use. In the second approach, when RRTZ takes effect upon a rezoning for new construction, this might also include municipal approved density bonuses, housing agreements, and/or cash in lieu of amenities on site.

Naomi Reichstein finished her presentation with a reflection on the possibility of integrating RRTZ into specific land-use planning instruments such as official community plans (OCPs) and strategic plans for transit-oriented development, potentially incorporating rental tenure into the development and densification requirements of these instruments.

PRESENTATION 2: Implementation Approaches: Residential Rental Tenure Zoning

Robert Batallas spoke about the City of Victoria's experience with, and approach to, RRTZ. In December 2018, Victoria City Council directed staff to move forward with RRTZ in the city. Staff created an RRTZ bylaw for Victoria that allows the application of RRTZ through a rezoning application for new purpose-built rental, began a work plan to apply RRTZ to existing purpose-built, multi-unit residential rental properties, and incorporated RRTZ as a priority item in the forthcoming Victoria Housing Strategy update to explore options for broader use.

The approach taken by the City of Victoria had four steps to effectively incorporate RRTZ into their zoning regulations. The first step was the introduction of an RRTZ definition into the City of Victoria zoning bylaws. This would allow the application of RRTZ through rezoning applications for new purpose-built rentals. In the second step, the City staff presented the City Council with a workplan for applying RRTZ to existing purpose-built multi-unit residential rental properties. The workplan recommended that RRTZ not be applied to secondary suites and garden suites (laneway houses), due to possible unintended consequences and also recommended a broad public engagement process to receive input and feedback

on the application of RRTZ on existing purpose built multi-residential rental properties. The third step was to initiate the workplan using a rental database created in 2018 that excluded properties under strata titles, or those operated by non-profits or governments, as well as buildings with less than four units. The final step consisted of a HRC research project in partnership with the Sauder School of Business' Centre for Urban Economics and Real Estate, to explore potential impacts of RRTZ implementation on property values, density bonus systems, delivery of affordable housing, and financing reinvestment when borrowing against property equity/value.

Robert Batallas also reported on feedback from the 2019 Victoria Housing Summit and commented on the next steps to implement RRTZ. In July 2019, the City of Victoria's Housing Strategy would identify a range of actions and initiatives to support greater housing choices and improve affordability.

PRESENTATION 3: Residential Rental Tenure Zoning. Where are we going, what are our objectives?

David Sander, Hollyburn Properties Director, presented three different perspectives for the future of RRTZ based on possible objectives that various stakeholders might seek.

The first objective Sander addressed was, "To preserve privately-owned 'affordable' housing". RRTZ in this case could effectively downzone existing privately owned condominium buildings to rental tenure, creating legal non-conforming uses, decreasing the property's value. Because RRTZ cannot prevent owners from selling individual units or from renovating of tenants, its ability to preserve affordability or save rental buildings is questionable.

The second objective mentioned was "To increase the supply of rental housing". For this to happen, the residual value of the rezoned land through RRTZ needs to be greater than the value of the property in its current use. New supply will be built quicker as the difference between the potential value and its present value increases. Without incentives such as density bonuses put in place, it is unlikely to lead to an increase of supply.

The last objective was "To balance the delivery of new home supply across income thresholds". Sander identified three main categories across the different housing typologies: ending homelessness, rental housing, and ownership. The first one entails emergency shelters, transitional housing, supportive housing, and to some degree, non-market rental. The second category includes non-market rental, purpose-built rental, secondary suites (or coach/laneway houses), and some level of condominiums. In the final category, he considered condominiums and other forms of ownership.

Sander also addressed the developer's perspective around RRTZ, highlighting key

considerations that could attract the private sector, such as pre-zoning for rental to reduce costs and uncertainty and up-zoning for rental housing. Provincial rent controls are a factor in reducing the value of new rental buildings for developers.

This presentation finished with a short review of three cases of successfully encouraged developments that incorporated rental: The False Creek Flats in Vancouver, with the enactment of zoning bylaws in conjunction with design, tenure, and incentive policies and guidelines. The Voluntary Rental Housing in Commercial Districts of Burnaby as a part of a 4-policy plan that encompasses multiple strategies to protect and incentivize rentals. And finally the Density Bonus and Community Benefit Policy from the City of North Vancouver.

FACILITATED BREAKOUT DISCUSSIONS

Upon completion of the panel presentations, participants and panelists broke into four groups for the discussion session of the event. All groups followed a predefined set of questions and concerns in such a way that the results across the room were comparable. The discussion began with the identification of the perceived benefits and drawbacks of implementing RRTZ. Furthermore, the discussion touched on different aspects of public engagement surrounding a possible implementation of RRTZ. Finally, we discussed the conditions necessary to gain the support of those involved and the possible scenarios for a negative response.

Benefits and Drawbacks of RRTZ

In discussing the perceived benefits and drawbacks from implementing RRTZ, the audience was generally inclined to identify negative aspects of the tool. Moreover, several participants argued that realizing the benefits of RRTZ was conditional upon the terms of its application, the type of areas to which it applied, and the appropriate moment for its use in the planning cycle.

Some of the perceived benefits by participants were as follows:

- RRTZ is good for non-profit housing groups.
- Pre-zoning reduces uncertainty for developers.
- It can improve the consistency around governmental decisions regarding housing development.
- Commercial properties can also incorporate residential rental to provide an opportunity for developers and business owners to diversify their portfolios.
- It is flexible to some degree.
- The tool has the potential to be successful if used in the planning process of a



Part of the discussion groups.

predominantly single-family area, where traditional values are embedded in the community culture, or in master-planned communities.

- If it is introduced in the planning phase during community engagement, pre-zoning could be an appropriate way to implement RRTZ.

According to many workshop participants, RRTZ has limited benefits and few clear beneficiaries. However, it is worth noting that there was a view that the tool could help improve the relationship between government and stakeholders by reducing uncertainty and improving consistency in decision-making regarding affordable housing policies. In contrast, the perceived drawbacks or concerns presented in the discussion groups were generally more critical and noteworthy:

- It will lead to difficult and costly legal proceedings (should property owners be subject to a 'downzoning' by only allowing rental).
- The tool was perceived as top-down, heavy-handed government action, that could have legal implications leading to costly court battles. This is because downzoning and up-zoning always have a component of infringing on property rights.
- RRTZ could encourage sprawl elsewhere.
- Generally, rentals need more incentives because they are often not profitable enough for developers.
- The tool limits the flexibility needed for future market changes regarding the tenancy preferences or capacities of the citizens.

- If housing agreements continue to be used simultaneously with RRTZ, what is stopping developers from entering into housing agreements consistent with land use designations from Official Community Plans (OCPs)? Zoning takes precedence over OCPs, therefore a developer can dismiss the mandate of an OCP if its project is in compliance with the existing zoning.
- The mixture of tenures creates complexity, especially if there are multiple owners or managers.
- RRTZ could result in the suppression of property values.
- The tool could work great in publicly owned land but its use in private land would be extremely difficult.
- It also has a negative impact on legal non-conforming buildings. In the case of catastrophic loss like earthquakes or fires, RRTZ would keep them from immediately going through a redevelopment permit process.

The discussion generated a few additional considerations (listed below), that were not precisely benefits or drawbacks but are relevant to the implementation of RRTZ:

- RRTZ does not necessarily rule out opportunities for density bonuses.
- Since it is easier to pre-zone a specific portion of a master-planned community, this tool could work well in areas that are mainly Greenfield.
- The tool's greatest use is to signal the market towards rental and it can be combined with housing agreements for affordable housing. However, the city needs to allow additional density to make it happen.

Public Engagement About RRTZ

The second part of the discussion addressed the different aspects of public engagement surrounding RRTZ. To begin this section, we asked the participants to identify possible stakeholders that should be consulted. The resulting list includes the following stakeholders:

- Developers
- Local residents – both homeowners and renters
- Non-profit housing providers
- Landlord BC
- Land use and planning bodies
- Land economists
- Financiers
- Neighbourhood associations
- Property owners
- Canada Mortgage and Housing Corporation
- Property tax assessors
- Canada Revenue Agency

The conversation elicited some key insights. One recurrent observation from the participants was that the first step in engaging the community must include an education phase. Usually, for local governments it is convenient to engage using online tools; however, this is less effective than education campaigns because it is more difficult to know if the people receiving the information are understanding it correctly.

One important concern brought up in the discussion was the level of commitment that the government has to the results of the consultation process. Although these engagement mechanisms are a good opportunity to obtain informed opinions, they are also prone to failure when stakeholders “game” the public consultation system. A relatively small group of hostile, vocal people can have a disproportionate influence over a decision.

Despite understanding the consensus-building capacity of engaging with the community, developers remain wary about the possible drawbacks that these processes entail. One of the arguments presented was that public consultation should not over represent non-essential stakeholders. It was cautioned that this would make it more difficult to arrive at a consensus, therefore delaying implementation.

Instead of an open consultation process where the public is introduced to the policies for the first time, one alternative suggested was to incorporate public engagement into a



Part of the discussion groups.

comprehensive neighborhood planning stage, in which the community can have a direct input in their formulation.

Other areas of knowledge and planning should be taken into consideration for RRTZ. School planning and transportation planning are some of those areas where the biggest changes would come if RRTZ were implemented.

What Needs To Be Done For Effective Public Engagement

The conversation moved forward addressing different aspects to consider for a potential application of public engagement for RRTZ. One of the most frequent remarks was concerning the availability of information. Participants argued there must be more information available about several elements of RRTZ such as:

- Clarity about the desired outcomes associated with RRTZ and data on its long-term implications.
- Information on the possible increase of pressures on non-RRTZ land, making prices rise elsewhere.
- Information on land availability and willing partners.

To make public consultation more effective, local governments should help their targeted audience to gain a broader understanding of the market and non-market rental rates, as well as the housing situation within their cities, thereby enabling them to provide for more significant input.

Before engaging the public, it is crucial that local governments define what they expect to achieve with the tool, and provide a definition of success. This was one of the participants' key concerns about the long-term sustainability of the tool. For them, RRTZ represents a new layer of legislation that could reduce housing providers' flexibility and capacity to address the affordable housing crisis.

A final consideration that was frequently mentioned was the risk of confrontation during these consultation processes due to founded and unfounded concerns, leading to potential delays and disproportionate resistance to the tool in the process of implementation

Support Expectations for RRTZ

The final section of the workshop consisted of a discussion of the potential support the RRTZ would get from participants. We asked about possible conditions that would determine their level of support or opposition to this tool to create a clear picture of the deal-breakers for this group of stakeholders.

Conditions under which, participants would support RRTZ:

- If density incentives were included in the zoning/pre-zoning stages to create an appealing and obvious package from the beginning.
- If much of the information mentioned above were available.
- If it started in master-planned communities or local area planning processes.
- If it had sufficient public consultation.
- If it includes or allows housing agreements.
- If it was applied to city-owned properties.

Conversely, they would oppose RRTZ under the following circumstances:

- Without proper incentives.
- If it was applied too broadly and therefore, hindered any type of development in the area.
- RRTZ is a new tool being advanced quickly to address the current housing crisis; by focusing on rapid implementation, we may overlook the long-term effects of its implementation.
- If the tool reduces the ability to finance renewal and general flexibility.
- Without sufficient transparency and clarity about the goals and impacts of the tool.
- If there are no offsets or compensations for the perceived downzoning and loss of property value.
- If it doesn't have sufficient public consultation, especially with developers and homeowners.

KEY FINDINGS OF THE DISCUSSION

For many participants, RRTZ did not seem to be the right tool to address the housing crisis, and although it looks promising under particular circumstances, it must be used with discretion. There is a high risk that the financial resources supporting development and housing projects end up somewhere else if too many restrictions and regulations are in place.

There was also a perception that this tool adds another layer of complexity and difficulty for developing projects without introducing innovations that can't already be delivered through housing agreements and pre-zoning. Instead of providing resources and flexibility for developers, RRTZ could end up decreasing the property value of affected sites. Unintended consequences could result in legal actions against the city. Furthermore, it could push properties into a legal non-conforming situation; potentially exposing landowners to risk should redevelopment be necessary. For this tool to work, it is paramount to communicate and educate citizens about the expected outcomes of the application of the tool. It is also

necessary to find a way to add market value to the properties affected, as well as preserving as many incentives as possible to make projects economically feasible.

We wish to thank all those who participated in our session and facilitated discussions. Please note that the findings above were collected during the process of the group discussions and do not represent the views of any individual, nor do they suggest group consensus.

The Housing Research Collaborative thanks...

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Panelists/Discussion Facilitators: Penny Gurstein, Craig E. Jones, Naomi Reichstein, Robert Batallas, David Sander, Kai Okazaki, and Hollie Mckeil.

Notetakers: Mark McNaughton, Rose Southard, Lucie Stepanik, and Mark Poskitt.

and all participants for sharing their insights and knowledge.



Making a difference...together

This project is made possible with funding from the Real Estate Foundation of British Columbia and promotion from the Capital Regional District.