

STAFF REPORT TO INTERGOVERNMENTAL AFFAIRS COMMITTEE

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DATE: May 13, 2024

TO: STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS

NAME AND TITLE: Garth Frizzell, Chair, Standing Committee on Intergovernmental Affairs

SUBJECT: TAX SALE MANDATED PROCEDURAL CHANGES 2024

ATTACHMENT(S): 1. TAX SALE MANDATED PROCEDURAL CHANGES Package 2024

RECOMMENDATION(S):

THAT the Standing Committee on Intergovernmental Affairs RECIEVES FOR INFORMATION the report titled "Tax Sale Mandated Procedural Changes 2024", dated May 13, 2024; and

RECOMMENDS TO COUNCIL THAT a letter be written to the Ministry of Municipal Affairs to raise concerns regarding the challenges faced by the City in implementing the changes proposed as outlined in this report; and

RECOMMENDS TO COUNCIL that a copy of the letter be sent to NCLGA members.

PURPOSE:

This report sets out the context for pending legislative changes proposed by the Ministry of Municipal Affairs with respect to how municipalities notify homeowners and charge holders before the annual Tax Sale.

BACKGROUND:

Under section 254 of the Community Charter, a municipality must recover unpaid property taxes, including any interest and penalties owing on those taxes, by tax sale in accordance with Division 7 [Annual Municipal Tax Sale] of Part 16 [Municipal Provisions] of the Local Government Act. Every year at 10:00 a.m. on the last Monday of September at the council chamber, the collectors must conduct the annual tax sale, by offering for sale by public auction each parcel of real property on which taxes are delinquent. The minimum bid is the upset price, what equals the sum of all outstanding taxes (current, arrears and delinquent taxes, penalties, and interest as at the date of the tax sale), plus 5% administrative fee based on the outstanding taxes and applicable Land Title Office fees.

The highest bid received at the public auction above the upset price will be declared the purchaser of the property being auctioned. The bid amount over the upset price is called the surplus. If no bid is received at or above the upset price, the municipality is deemed to be the purchaser.

After the property is sold at tax sale, the current owners, registered charge holders or another person on behalf of them, have one year from the date of the tax sale to redeem the property. Redemption requires payment of the upset price, and daily interest accrued on the bid price up to and including

the date of redemption. The interest rate is set quarterly by the Province of BC and currently sits at 10.20%.

Failure of the property owner or charge holder(s) to redeem the property within the stated redemption period will result in the title of the property transferring to the tax sale purchaser. Any money received above the upset price must be paid without interest to the person who was the owner at the time of the annual tax sale, on written application to council. The money will not be paid to the owner if another person claims their entitlement to the surplus funds. In that case, money will be paid to the Supreme Court. If money is not claimed by anyone after 9 months of the tax sale date, the City will transfer the surplus to the Provincial administrator under the Unclaimed Property Act.

In September 2017 the Office of the Ombudsperson received a complaint regarding a property sold in a tax sale held by the City of Penticton, which the complainer considered unfair. The property with a market value of \$420,000 had delinquent outstanding taxes and was put to sale for the upset price of \$10,083.26 with a successful bidder at \$150,000. The property was not redeemed and transferred to the successful bidder one (1) year after the sale.

The Ombudsperson examined the steps undertaken by the City of Penticton and further examined the entire tax sale process as a whole. In December 2021, the Ombudsperson published a comprehensive report, with six (6) recommendations, including five (5) addressed to the Ministry of Municipal Affairs, for the tax sale process to be fairer. The full report is available as part of the attachments to this report.

In February 2023, Bill 3 – 2023 Miscellaneous Statutes Amendment Act, 2023 (*Part 5 – Municipal Affairs Amendments available under attachment 2*) received third reading. This bill was introduced, adding section 647.1 to the Local Government Act with the requirement for municipalities to notify all owners and charge holders, 60 days before the annual tax sale date either by serving the notice or by sending it by registered mail. In November 2023, Bill 4 - Miscellaneous Statutes Amendment Act (No. 3), 2023 (*Part 6 - Municipal Affairs Amendments available under attachment 3*) was introduced, modifying section 647.1 (2)(e) regarding the amount to be paid to avoid a property going to tax sale.

Even if the current tax sale legislation does not mandate municipalities to inform an owner or charge holder of an upcoming tax sale, many municipalities have that process in place. Every year the property tax notice includes a message explaining that if current taxes are not paid by December 31 of that year, they will become arrears and daily interest will apply. The same messages are added when a property already has an arrears balance and can possibly become delinquent. Every year the City sends three notices: Property tax notice in May, Outstanding Property Tax Notice in July, and in November.

In the year a property has delinquent taxes, the City will send letters explaining the tax sale process; including legislation, important dates, steps to avoid the tax sale, and office contact details for further information. After the property tax due date, the tax office assigns staff members dedicated to contacting the owners and charge holders of properties with delinquent balances. Staff spend hours retrieving property title on LTSA to find out any type of information that could help the search of these owners. Multiple search engines are used to try to contact the owners and charge holders. A list is created to keep track of all contact made. It should be noted that several properties in delinquent status are reoccurring properties, where the tax office already has contact information from previous years.

As the sale approaches Staff continue to attempt to contact owners and charge holders, with attention focused on those for which no information can be found.

When Bill 3 and Bill 42 were first introduced to the municipalities in 2023, it prompted questions as to if the recommended changes to the notification pre-tax sale to property owners and charge holders would actually address the problems with the current tax sale process. Overall, municipal staff felt that the measures put forward would not have avoided the issues raised in the City of Penticton case.

Many municipalities have contacted the Ministry of Municipal Affairs, individually or on the GFOABC quarterly Collectors Forum, including Burnaby, White Rock, and Surrey with concerns such as:

- The obligation to serve the owners and charge holders or send registered mail does not guarantee an understanding of the tax sale process. A single national registered mail costs \$9.75 while international costs \$19.50.
- The increase in administrative work is significant, as preparing registered mail and monitoring for acceptance takes a lot of time, which will cause a need to hire extra staff.
- The cost and time involved in having to possibly hire a process service for all non-recipient of the registered mail is large. A process server costs around \$200.00 per person that needs to be contacted.
- The cost and staff time involved in possibly going to the Court to seek substitute ways to serve the information is relevant, as it will include the involvement of the multiple City departments and external lawyers. Consideration must also be given to the availability of court time, considering all municipalities in BC will have to do the same.
- Failure to meet these requirements may cause the tax sale to be set aside and declared invalid.

In most municipalities the number of properties that are auctioned is very small compared to the number of properties with delinquent balance at the start of the year. Municipalities are already doing their due diligence before the sale and trying all attempts to contact owners. The extra time and cost related to servicing the owners should remain focused on the properties that are sold, and not the ones that have delinquent balances. In addition, it is unclear if there is any correlation between sending registered mail and a person paying their property taxes.

It is recommended that the Committee recommend to Council that a letter be written to the Ministry of Municipal Affairs explaining the challenges faced by municipalities in implementing the changes proposed, to strongly indicate that the changes do not guarantee improvements to what is already a well-managed process undertaken by municipalities. The letter should also seek support from the Ministry of Municipal Affairs in reviewing the entire tax sale process, addressing other recommendations made by the Ombudsperson.

These include a review of the upset price in relation to the market value of the property, and the rate of interest currently charged on tax sale properties. It is also recommended that a copy of the letter be sent to neighboring municipalities (NCLGA members) with intent of encouraging them to do the same.

STRATEGIC PRIORITIES:

This advocacy may be viewed under the strategic pillar of City Government and infrastructure Priorities, specifically, continuing to improve processes and practices to support effective and efficient service delivery.

FINANCIAL CONSIDERATIONS:

No financial considerations are present from the recommendations included. The cost of administering changes proposed in the discussed legislation are significant.

SUMMARY AND CONCLUSION:

This report offers the committee an opportunity to advocate alongside other municipalities for a more beneficial review of the tax sale process.

RESPECTFULLY SUBMITTED:

Garth Frizzell, Chair, Standing Committee on Intergovernmental Affairs

PREPARED BY: Eric Depenau, Acting Director, Administrative Services

APPROVED:

Walter Babicz, City Manager

Meeting Date: 2024/05/13