

DATE: June 4, 2024

TO: MAYOR AND COUNCIL

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

SUBJECT: TAX SALE MANDATED PROCEDURAL CHANGES 2024

ATTACHMENT(S): 1. Draft Letter to Minister Municipal Affairs

RECOMMENDATIONS:

1. THAT Council RECEIVES FOR INFORMATION the report dated June 4, 2024 from the Standing Committee on Intergovernmental Affairs, titled “Tax Sale Mandated Procedural Changes 2024”.
2. THAT Council DIRECTS administration to send a letter to the Ministry of Municipal Affairs to raise concerns regarding the challenges faced by the City in implementing the proposed changes to the municipal tax sale, substantially similar to the draft letter attached to the report dated June 4, 2024 from the Standing Committee on Intergovernmental Affairs, titled “Tax Sale Mandated Procedural Changes 2024”.
3. THAT Council DIRECTS administration to send a copy of the letter addressed to the Ministry of Municipal Affairs referenced in the report dated June 4, 2024 from the Standing Committee on Intergovernmental Affairs titled “Tax Sale Mandated Procedural Changes 2024” to North Central Local Government Association 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. This matter has been reviewed by the Standing Committee on Intergovernmental Affairs at the May 27th, 2024 meeting and the recommendations presented here are suggested by the committee.

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. Every year at 10:00 a.m. on the last Monday of September, 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 and Survey Authority of BC (LTSA) fees.

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.

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.

In February 2023, Bill 3 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 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 property tax notices in May and reminder notices on unpaid balances later in the year.

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 Government Finance Officers Association of BC (GFOA) 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.
- The cost and time involved in having to possibly hire a process service for all non-recipients of the registered mail is around \$200.00 per person that needs to be contacted.
- If registered mail and process servers are unsuccessful, the City must engage a lawyer to perform substituted service, which would involve obtaining external lawyers. This service historically can cost approximately \$1500 - \$2500. 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 declared invalid.

The number of properties that are auctioned is very small (less than 10) compared to the number of properties with delinquent balance at the start of the year (greater than 300). Municipalities are already doing their due diligence before the sale and trying all attempts to contact owners. It is Administration's opinion that 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 whether any of the measures listed above correlate to a person paying their property taxes.

It is recommended that Council write a letter 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. 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:

The cost of administering changes proposed in the discussed legislation are significant and would result in a need to hire additional staff to meet the requirements of the new legislation. It is also important to note that the municipality has no legislated authority to add the costs of registered mail, process servers or substituted service to the upset price so there is no means to recover those costs.

SUMMARY AND CONCLUSION:

This report offers Council with a committee recommendations on advocacy related to proposed changes related to the tax sale process.

RESPECTFULLY SUBMITTED:

Councillor Garth Frizzell, Chair, Standing Committee on Intergovernmental Affairs

Report prepared by: Eric Depenau, Director Administrative Services, Staff Liaison.

APPROVED:

Walter Babicz, City Manager

Meeting Date: 2024/06/12