



Meeting March 25, 2024

File: 7815-09

COUNCIL REPORT

TO: MAYOR & COUNCILLORS
FROM: DEPUTY CHIEF ADMINISTRATIVE OFFICER AND CHIEF FINANCIAL OFFICER
SUBJECT: **TAX SALE MANDATED PROCEDURAL CHANGES 2024**
PURPOSE: To provide information pertaining to the Tax Sale changes proposed through Bill 3 and 42, and request Council to write a letter to the Ministry of Municipal Affairs to raise concerns about the changes being implemented which will not help homeowners facing tax sale.

RECOMMENDATION

THAT the report titled "Tax Sale Mandated Procedural Changes 2024", dated March 25, 2024, be received for information; and

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 section 3.4 of this report; and

THAT a copy of the letter be sent to neighbouring municipalities.

EXECUTIVE SUMMARY

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 report demonstrates how the City of Burnaby currently notifies owners of the pre-tax sale, identifies concerns held by City of Burnaby staff regarding the recommended changes to provincial legislation and seeks to notify the Ministry of Municipal Affairs to address the said concerns.

1.0 POLICY SECTION

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.

2.0 BACKGROUND

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.

3.0 GENERAL INFORMATION

3.1 Legislative Changes

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 under attachment 1.

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 owner 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.

3.2 City of Burnaby current notification process pre-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, the City of Burnaby and many other 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 three extra letters explaining the tax sale process; including legislation, important dates, steps to avoid the tax sale, and office contact details for further information.

In July, after the property tax due date the tax office assigns three or four staff members dedicated to contact the owners and charge holders of properties still with delinquent balances. Staff spend countless 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 trying 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.

In August staff continue to contact owners and charge holders on a weekly basis, with attention focused on those for which no information can be found. Tax office staff work with colleagues from the City of Burnaby Bylaw division - Property Use Coordinators, to visit such properties to deliver an advisory letter, which includes Tax Office contact details.

This approach has been very effective. The City usually starts with around 500 properties with delinquent balances at the beginning of the year, that number is reduced to 250-300 by July, and in 2022 only two properties were included on the tax sale and in 2023 just one was sold at tax sale.

3.3 Effectiveness of proposed changes

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, especially the ones in the lower mainland 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 City's legal department and maybe 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 for their property taxes.

3.4 Recommendation

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. The letter should also seek support from the Ministry of Municipal Affairs in reviewing the entire tax sale process, addressing other recommendations (Attachment 1) 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 neighbouring municipalities with intent to encourage them to do the same.

4.0 COMMUNICATION AND COMMUNITY ENGAGEMENT

Not applicable

5.0 FINANCIAL CONSIDERATIONS

Should the City of Burnaby have to implement the recommendations being considered by the Ministry of Municipal Affairs, the potential cost implications and resourcing requirements could be significant and pose an added burden to departmental budgets. Based on previous years information, in July around 250 properties had delinquent balances outstanding. Even if most of these properties have a single owner, many would have more than one owner. Most properties also have between 1 and 3 charge holders, with the most common being mortgage, strata, and speculation tax liens. We estimate a total of 1,000 registered mail would need to be sent. At least two TFT (temporary full time) Clerk 3 staff would have to be hired to help with the entire process of notification pre-tax sale, starting at \$68,630 + benefits per position. With the current cost of registered mail, we can estimate a spend in the region of \$10,000 in LTSA title searches and registered mail. In the event that half of the registered mail sent are not signed for, another \$100,000 is estimated for process service. The cost of going to court to acquire substitute service is unknown, as it will depend on whether the City has to hire external lawyers to help with the process.

Respectfully submitted,

Eva Juca, Manager Revenue and Taxation

For

Noreen Kassam, Deputy Chief Administrative Officer and Chief Financial Officer

ATTACHMENTS

Attachment 1 – Public Report No. 53 A Bid for Fairness - December 8, 2021
Published by the Office of the BC Ombudsperson

Attachment 2 – Extract from Bill 3 - Municipal Affairs Amendment Act 2023

Attachment 3 – Extract from Bill 42 - Municipal Affairs amendments Act (No. 3) 2023

REPORT CONTRIBUTORS

This report was prepared by Eva Juca, Manager Revenue and Taxation and reviewed by Richard Rowley, Director Finance Revenue Services.