Minutes – Executive Policy Committee – July 11, 2018

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 25, 2018

Item No. 12 Tax Sale Process Changes

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the Public Service be directed to submit a formal request to the Province of Manitoba to amend the City of Winnipeg Charter to amend or repeal section 385 in respect of assignment of a tax sale certificate.

2. That the Public Service be directed to review and report back within 180 days on the following potential changes to the City's current tax sale process policies:

    A. reducing the number of years that the real property taxes in respect of a property must be due and unpaid before the tax sale process is triggered; and

    B. offering for sale by public auctions any property that is liable to be sold for unpaid taxes, except for any specific properties for which the City intends to exercise its prior right to purchase.

3. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 25, 2018

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On June 25, 2018, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Tax Sale Process Changes

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	J. Kiernan	N/A	D. McNeil

EXECUTIVE SUMMARY

The City of Winnipeg's (the "City") long-standing policy with respect to tax sales is to exercise its prior right to purchase all tax sale properties without holding a public auction. It is likewise City policy that the tax sale process is only triggered once real property taxes levied against a property have been due and unpaid for three years. These policies have been in place since 1972 and do not mirror the tax sale process followed by all other municipalities within the Province of Manitoba.

Further, under the City of Winnipeg Charter (the "Charter"), any person with an interest in or a charge on a property in tax sale can require that the City of Winnipeg assign to them the tax sale certificate – meaning anyone with an interest in a tax sale property can ultimately obtain title to that property. Whatever its original intended purpose may have been, this process of assignment is currently used by certain individuals to obtain title to properties for amounts which are far less than fair market value, with the original property owner having lost all equity in their property.

The Public Service recommends that a formal request be submitted to the Province of Manitoba (the "Province") to amend the Charter in respect of the assignment process. The Public Service further recommends that the current tax sale policies in respect of public auctions and the number of years that real property taxes must be due and unpaid in order to trigger tax sale be revisited.

RECOMMENDATIONS

1. That the Public Service be directed to submit a formal request to the Province of Manitoba to amend the City of Winnipeg Charter to amend or repeal section 385 in respect of assignment of a tax sale certificate.

2. That the Public Service be directed to review and report back within 180 days on the following potential changes to the City's current tax sale process policies:

A. reducing the number of years that the real property taxes in respect of a property must be due and unpaid before the tax sale process is triggered; and

B. offering for sale by public auctions any property that is liable to be sold for unpaid taxes, except for any specific properties for which the City intends to exercise its prior right to purchase.

3. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Pursuant to Clause 3(1) (h) of the City Organization By-law No. 7100/97, Council has exclusive authority over submitting requests for legislation to other levels of government.

Additionally, any change to the current tax sale process policies will require Council approval.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations are concurred in, the Public Service will:

- prepare and submit to the Province a formal request for amendments to the Charter with respect to the assignment of tax sale certificates; and

- review and report back on potential changes to the City's current tax sale policies with respect to public auctions and the number of years that real property taxes must be due and unpaid in order to trigger tax sale.

HISTORY/DISCUSSION

Assignment

While the ultimate goal of the tax sale process from the City's perspective is payment of outstanding real property taxes, there are many instances where this process results in the City obtaining title to a property. Under Section 385 of the Charter, any person with an interest in or a charge on a property in tax sale can pay to the City the amount required to redeem the property and thereby require that the City assign to them the tax sale certificate in respect of that property. Assignment then allows the assignee to assume conduct of the tax sale and, ultimately, obtain title to the tax sale property.

While the original intent of the tax sale provisions is unknown, the reality is that this process is most often utilized by individuals to obtain properties for a fraction of their fair market value. Unfortunately, the property owners who most often fall victim to these individuals are vulnerable members of society – they may be of limited means or capacity, they may be elderly, or they may have mental health difficulties. The Public Service and The Property Registry always attempt to work with property owners with the goal of having properties redeemed; however, the Charter allows little room for discretion when it comes to assignment.

Because there are other remedies available to encumbrance-holders, such as foreclosure or other court proceedings, there appears to be little, if any, good policy reason for the assignment provisions at this time. As such, the Public Service recommends that a formal request be submitted to the Province to amend the Charter to either repeal section 385 in its entirety or amend it to better protect property owners.

Tax Sale Process Policies

On April 19, 1972, Council adopted a policy pertaining to Arrears of Taxes - Tax Sale and Redemption that including the following provisions:

1. a property would be liable to be sold for unpaid taxes where real property taxes in respect of that property have been due and unpaid for three years (the "3 Year Policy"); and

2. the City would exercise its prior right to purchase all properties sold for unpaid taxes and no public auction would be held (the "No Auction Policy").

A copy of this resolution of Council is attached as Schedule "A" to this report.

If the recommendations of this report are concurred in, the Public Service will review the 3 Year Policy and the No Auction Policy and analyze the potential impacts associated with amending these policies. A separate report will then be brought back to Council for their consideration.

Number of years due and unpaid

Under Section 371 of the Charter, real property within the City of Winnipeg is liable to be sold for unpaid taxes where real property taxes on that property have been due and unpaid for more than one year after December 31 in the year in which those taxes were imposed. For example, if real property taxes for 2018 are imposed on a property on June 1, 2018, then that property could be liable to be sold for unpaid taxes if the 2018 taxes were not paid by December 31, 2019.

The City's "3 Year Policy" appears to have been adopted upon amalgamation and formation of Unicity in 1972 as a means of aligning the varying tax arrears policies among the amalgamated municipalities. Although at the time there was a valid reason for the 3 Year Policy, the practical effect from a modern perspective is that the amount that a property owner is required to pay to redeem their property from tax sale can be quite significant – each year that real property taxes remain unpaid, the property accrues interest and penalties. In addition, once a property has been in tax sale for more than one year, the property incurs additional charges and costs, such as the City's legal fees, Winnipeg Land Titles fees, process server disbursements, etc.

Public Auction vs. Prior Right to Purchase

The Charter provides the City with the option of proceeding by way of public auction to dispose of tax sale properties or by exercising its prior right to purchase. On April 30, 2003, Council delegated authority to the Chief Administrative Officer to determine on an annual basis whether the City would exercise its prior right to purchase properties in tax sale. This authority was further delegated to the Chief Financial Officer and then to the City Assessor.

Under the No Auction Policy adopted in 1972, the City exercises its prior right to purchase in respect of all properties that trigger the tax sale process. This is an anomaly in Manitoba –

every other municipality in the province is required, under The Municipal Act, to proceed by way of public auction for all tax sale properties.

The City's No Auction Policy represents a significant draw on staff resources, requiring involvement from the Assessment and Taxation Department, the Real Estate Branch of the Planning, Property and Development Department and the Legal Services Department. By exercising its prior right to purchase all properties in tax sale, the City bears the responsibility of ensuring that notice of the proceedings is served on all interested parties. The process of completing service often creates significant work; on some occasions, issues with difficult service result in tax sale files remaining active for many years, with some files remaining active for 10 years or more.

Additionally, while a significant number of properties are eventually redeemed from the tax sale process, wherever the City (or an Assignee) does obtain title to a property, there are no surplus proceeds to provide back to the owner. If the City held public auctions for properties in tax sale, there could potentially be surplus proceeds from the sale which could be returned to the former property owner or to anyone with an encumbrance registered against the property in accordance with the Charter.

FINANCIAL IMPACT

Financial Impact Statement Date: May 10, 2018

Project Name:

Tax Sale Process Changes

COMMENTS:

There are no direct financial implications associated with this report.

"Original Signed By"
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services (as to legal issues)
- Assessment and Taxation Department

OURWINNIPEG POLICY ALIGNMENT

The recommendations in this report are aligned with the enabling strategies provided for in OurWinnipeg Policy 01-3: Direction 5, and specifically the following:

“Monitor and evaluate policy decisions… from a long-term sustainability perspective”

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Tyler Miller, Real Estate Officer
Date: May 10, 2018
File No: TBD

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Attachments:

1. Schedule “A” – Council Minutes dated April 19, 1972