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An Ordinance to Implement a Municipal Tax Title Assignment Sale Auction Program to Improve Collection, Cash Flow and Free Cash Position

Summary: An ordinance to improve the collection of outstanding tax liens by providing an option to implement a tax title assignment sale auction as authorized by MGL Ch. 60

Be it Ordained by the Municipal Council of the Town of Amesbury assembled and by the authority of the same, as follows:

The City Treasurer is authorized to implement a tax title assignment sale auction process to aid in the collection of overdue real property tax taxes.

Such a program shall utilize a third-party resource to manage the assignment auction in accord with all state statutory requirements. The selection of the third-party resource shall

The program shall adhere to the following statutory rules and restrictions:

Tax liens may be sold individually or in bundles. The minimum bid must be the redemption payoff amount as of the auction date including all fees (legal, publication, recording, etc.);

Property owners and parties-in-interest may still redeem after an assignment, up and until a foreclosure judgment has been entered.

Owners may redeem by paying the municipal treasurer up and until a foreclosure complaint has been filed in Land Court; after that, all redemptions must be processed through the assignee (aka 'winning bidder');

The redemption price is the same as if the municipality still held the lien; assignees may not allocate any premiums paid at auction to the redemption amount;

Assignees assume the same rights and obligations of the municipality in the administration of tax titles under Mass. General Laws Chapter 60.

The auction process will adhere to the following auction rules and regulations:

The liens being offered in an Assignment of Tax Title Auction will not have been foreclosed on by the City.

The City reserves the right to reject any and all bids.

The minimum bid is the amount due for redemption on this date. Any price paid in excess of the minimum bid ("premium") may not be reimbursable by the assignee from a party redeeming the property. See, DOR IGR 05-208, p. 5

The Treasurer shall determine a minimum bid as well as an incremental bid used during the auction.

The purchaser must pay a 10% deposit at the time of the auction. The deposit shall be made in the form of bank treasurer's check or check made payable to the "City of Amesbury."

After full payment is received, the Treasurer will issue an Instrument of Assignment and Purchaser's Statement for each lien assigned.

Full payment must be received within 30 days of the date of the auction.

If full payment is not received within such time, the lien will be offered to the next highest bidder, and the City reserves the right to keep the deposit from the initial bidder.

Any error, misstatement or omission in the description of the property shall not annul the assignment or be grounds for any abatement or compensation.

The Purchaser must pay for all recording fees.

The Instrument of Assignment and the name of the person or agent authorized to release the lien (purchaser's statement) must be recorded at the Southern Essex County Registry of Deeds.

The Purchaser must keep future taxes current until he/she forecloses the lien with the Massachusetts Land Court or until the assigned tax title has been redeemed. Failure to keep taxes current shall render the purchaser ineligible to participate in future tax lien assignment auctions.

All bidders, if not a natural person, must be qualified to do business in the Commonwealth of Massachusetts and provide documentation to that effect. To be eligible to participate in the auction, bidders must pre-register by a date, time and manner to be determined by the Treasurer based on the advice of the third-party resource managing the auction.

If the tax liens are being auctioned as part of a bundle, then all of the liens to be sold in any auction will be bundled and sold as one unit to the highest bidder subject to a minimum bid to be established by the Treasurer. In the event that there are multiple parties bidding the same price, the person or entity recognized first by the Treasurer will be selected as high bidder in accordance with standard auction procedures.

Background and Relevant Support

Summary of Benefits:

- Clear process administered to auditable standards
- Accelerated cash inflow
- Lower administrative burden
- Lower legal costs
- Lower risks from environmental or bankruptcy risks of taxpayers
- Potential for improved bond rating

The City has approximately \$1,600,000 in tax liens for past due real property taxes outstanding. Of this amount approximately half is attributed to the Micro Fab location and it is not feasible for the City to perform a tax taking which would otherwise burden the City with the environmental liabilities associated with that property.

But the remaining parcels are potential candidates for a tax title assignment sale auction. Outstanding amounts represent a burden on the cash flow and operations of the City. Monies that are not collected need to otherwise be borrowed or taken from Free Cash which represents its own opportunity cost.

Although outstanding taxes due are subject to accrued interest of 14% per annum, there is an opportunity cost associated with the delayed time until collection along with tangible costs associated with collection or any subsequent tax taking or foreclosure.

For comparative purposes, these outstanding balances represent approximately 1.3% to 1.5% of the total FY2017 budget. While this amount is generally in line with surrounding communities, it still represents a burden and opportunity cost for the City. For instance, one may view this in terms of two critical City functions. The outstanding balances (net of Micro Fab) represents 20.25% of the approved FY2017 Police Department budget of \$3,985,108 and 24.9% of the approved FY2017 Fire Department budget of \$3,232,263.

The use of an outsourced tax title assignment sale auction generally increases the speed of collecting outstanding balances. Generally, when a delinquent taxpayer receives notice they are more motivated to settle and redeem. This in turn increases cash flow leading to improved bond ratings which lead to lower borrowing costs.

The use of an outsourced auction is a prudent and low-risk method to improve collections without additional administrative time or costs. By having a methodical process in place, delinquent tax payers are provided with a clear, unequivocal message that the City is serious about its duty to collect. And by utilizing the services of outside subject matter experts, in this case an outsourced tax lien investment company, City resources and personnel are conserved.

As outlined in the rules and regulations accompanying this, the City always retains the option to not include tax liens as part of an auction. But if the City does choose to proceed, this tool provides a collection solution that does not add to the legal or administrative costs associated with a tax taking through Land Court.

The average cost of proceeding with a tax lien foreclosure through the Land Court otherwise averages approximately \$2,000 for each property. The time it may take to collect may be at least one-year from the date the City decides to pursue such an action which in and of itself may

be several fiscal quarters after the initial non-payment. The total time of this process is more likely longer before a taking is granted. Once such a decision is granted by Land Court there is at least another six-month time period before final disposition. During this time period the City is not collecting funds.

Using an outside auction transfers the collection and attendant legal costs to the assignee, typically an investment company seeking a higher yield on a fixed income investment. Further, the assignee assumes the responsibility to pay accrued taxes in a timely manner from the date that the property lien is transferred.

For background on this concept:

Massachusetts General Laws, Chapter 60, "Collection of Local Taxes" outlines the process and authorizations

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleX/Chapter60>

Media Resource:

http://money.cnn.com/2012/03/05/real_estate/tax-liens/index.htm

Professional Resources:

<https://www.strategicauctionalliance.com/municipal-auctions/tax-title-auctions/>

<http://www.tallagellc.com/index-2.html>