

Order M159

COVID-19 financial measures for Improvement Districts.

To all Improvement District Trustee Chairs:

The Province recently issued Ministerial Order M159 (Order M159) under section 10 of the Emergency Program Act.

This backgrounder provides additional context to the measures covered under Order M159. The relevant sections of Order M159 for Improvement Districts are as follows:

- Section 5 – Borrowing from Reserve Funds
- Sections 17 – Delay of Tax Sale

I. Section 5 of the Order --- Improvement District Borrowing from Statutory Reserve Funds

In order to strengthen improvement district cash position, the Province will allow borrowing from one or more reserve funds for operational purposes (despite section 706 of the Local Government Act).

Any money borrowed from reserves must be repaid within five years of the time of borrowing. Also, there will be no requirement to pay interest on these borrowed funds, though individual improvement districts may choose to do so. This should help alleviate some short-term cash concerns by accessing cash and investment in statutory reserves.

The borrowing of funds can only be done in calendar 2020. There is no established dollar limit on the borrowing; however, the borrowing must be used for current-year budgeted expenditures and required remittances to other governments. The total 2020 borrowing from reserve funds must be fully repaid to the respective reserve funds used for the borrowing on or before December 31, 2025. There is no interest payable on borrowing from reserve funds over the repayment period.

If the amount is not fully repaid by December 31, 2025, the improvement district must include the repayment of outstanding borrowing in 2026 budget plus a penalty. The penalty will equal 5% of the outstanding reserve fund borrowing at December 31, 2025. This amount must be recovered through the annual requisition or tax levy for 2026.

II. Sections 17 of the Order --- Improvement District Tax Sale Delay

The Province has enabled improvement districts, by bylaw, to delay the statutory date of the 2020 property tax sale by one year (to 2021). An improvement district board of trustees has the discretion to set a specific date for the (delayed) 2021 annual tax sale. If no date is specified in bylaw, the tax sale date will default to September 27, 2021. Note: An improvement district cannot single out individual properties for delay of tax sale while excluding others. The improvement district must provide this to all eligible properties or to none.

If the 2020 tax sale delay bylaw is not adopted or fails to meet the terms of Order M159, the improvement district must proceed with the 2020 tax sale in accordance with the Local Government Act.

If the improvement district board of trustees elect to delay the 2020 tax sale by one year, they must adopt the property tax sale delay bylaw through majority vote of the trustees. Once enacted, the bylaw must be signed by chair presiding at the meeting and stamped with the improvement district seal on or before August 31, 2020. Two signed and sealed copies of the bylaw must be sent to the Inspector for registration once the bylaw has been adopted. The outstanding taxes and accrued interest will be included in the upset price for the 2021 tax sale.

Within two weeks of the bylaw adoption, trustees must send notice to each property owner whose property is potentially up for 2020 tax sale. The notice must state that 2020 tax sale has been delayed for one year, and, unless paid, the outstanding taxes for 2020 will stay as outstanding through the remainder of 2020 and 2021 (up to the 2021 tax sale date) and will continue to accrue interest.

If the tax sale is delayed, there will be no requirement for public notice of tax sale in 2020 (under s.720 of the Local Government Act) because there would be no tax sale. However, the improvement district may choose to do a public notice that there will be no tax sale in 2020. This is entirely at the discretion of the board of trustees.

If the improvement district elects to delay the 2020 tax sale for one year, the properties with outstanding taxes will continue to accrue interest on those taxes. On September 27, 2021 (or date specified by bylaw), the improvement district must conduct its normal 2021 tax sale.

At the date of 2021 tax sale, the upset price on the property will equal all outstanding taxes owed to the improvement district, interest to the date of the tax sale, and expenses and fees associated with the tax sale (under s.720 (2)(c) of the Local Government Act). A property owner may prevent a tax sale from occurring by paying the upset price anytime prior to the commencement of the tax sale.

Further Information

For additional information, please contact:

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