



## Board Agenda Item 22

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DATE: December 12, 2023

TO: Board of Supervisors

SUBMITTED BY: Oscar J. Garcia, CPA, Auditor-Controller/Treasurer-Tax Collector

SUBJECT: Approval to Sell Tax Defaulted Properties that are Subject to Tax Collector's Power to Sell and Direct those Properties be Sold at Public Auction

### RECOMMENDED ACTION(S):

**Adopt a resolution approving a March 14-15, 2024 sale of tax-defaulted properties that are subject to the Tax Collector's power to sell and authorizing the Tax Collector to reduce the minimum bids on certain previously offered properties in specified circumstances.**

Approval of the recommended resolution authorizes the Auditor-Controller/Treasurer-Tax Collector (Tax Collector) to attempt to sell the 288 tax-defaulted properties listed on Attachment 1 at a two-day public auction via the Internet for the stated minimum bids. The auction would take place March 14 through 15, 2024. For the 29 properties on that list that were offered but not sold at a previous tax sale, approval of the recommended resolution would allow in the Tax Collector to reduce the minimum bid during the sale if no bids are received. Additionally, approval of the recommended resolution would allow the Tax Collector to offer or reoffer, within 90 days after the close of the tax sale, any property on the Tax Sale List, including both Previously Offered Properties and Newly Offered Properties, that are not offered or sold during the tax sale. The Tax Collector may reduce minimum bids for previously offered properties by greater than 50%. Some of these properties have previously been offered for tax sale for more than two or more years without receiving minimum bids. All properties would be sold to the highest bidder, except that, for nonresidential commercial property, if the highest bidder fails to consummate the sale by paying the amount due within the time specified by the Tax Collector, the Tax Collector may offer the property to the next highest bidder at their price.

In general, all delinquent taxes, penalties, and costs of the sale are recovered through the sale of properties. But some taxes, penalties, or costs may not be recovered if a property with a reduced minimum bid sells for less than the minimum bid. The benefit to the County of selling properties at reduced minimum bids is to return those properties to revenue-generating status. This item is countywide.

### ALTERNATIVE ACTION(S):

Under Revenue and Taxation Code section 3692, subdivision (a), the Tax Collector is required to attempt to sell tax-defaulted properties within four years of the time the property becomes subject to sale for nonpayment of taxes. Therefore, not approving the recommended action would hinder the Tax Collector's ability to comply with Revenue and Taxation Code section 3692, subdivision (a).

The Board may choose not to give the Tax Collector the additional authorizations to reduce the minimum bid amounts on some parcels. If that is what the Board chooses, then the Board would need to modify the recommended resolution by striking sections 4 and 5 of that resolution before adopting it. Those additional authorizations are especially useful when parcels' market value is less than the minimum bid amount, which

is a factor that may be considered under Revenue and Taxation Code section 3698.5. The purpose of the Tax Sale is to redeem any unpaid taxes, penalties, and costs along with returning the tax-defaulted property to a revenue-generating status; therefore, striking sections 4 and 5 of the recommended resolution may result in properties not getting sold and not reverting to a revenue-generating status.

#### FISCAL IMPACT:

When tax-defaulted properties are sold for the statutory minimum bid, the County recovers the cost of sale and enough to pay the outstanding delinquent taxes, penalties, and costs for the vast majority of parcels sold at auction. Some taxes, penalties, or costs may not be recovered if a parcel with a reduced minimum bid sells for less than the initial minimum bid, under the authorization provided in sections 4 and 5 of the recommended resolution.

#### DISCUSSION:

##### 1. Tax Sale Basics

Each calendar year taxes on real property become due and payable in two installments. The first installment is due on November 1 and delinquent if not paid by December 10 and the second installment is due on February 1 and delinquent if not paid by April 10. When taxes become delinquent, a 10 percent penalty attaches immediately. If all taxes, penalties, and costs are not paid by the end of the tax year, which is June 30, then the property is declared tax defaulted. When property is tax defaulted, a redemption penalty of 1 ½ percent per month begins to accrue until the property is redeemed.

If property remains tax defaulted for five years or more (or three years or more in the case of nonresidential commercial property), then the Tax Collector has the power to sell the property. After that power of sale arises, the Tax Collector must attempt to sell the property within four years. The Tax Collector may not sell tax defaulted property unless the Board of Supervisors approves the sale.

The purpose of the tax sale is to recover delinquent taxes and penalties and to return tax-defaulted properties to tax-paying status by putting them into the hands of owners who remain current on the property taxes.

When property is sold at the tax sale, there is a statutory minimum sale price, or minimum bid. The statutory minimum bid is the amount necessary to redeem the property, which includes all defaulted taxes, all delinquent penalties, all redemption penalties, a redemption fee, and the costs of sale.

##### 2. Personal Contacts for Certain Owner-Occupied Properties

Before the tax sale, Tax Collector staff attempt to make personal contact with the owner, the occupant, or both, of each tax defaulted property that satisfies the requirements in section 3704.7 of the Revenue and Taxation Code. The requirements in that section are that the property is the primary residence of the last known assessee, as indicated by either a valid homeowner's exemption on file with the County Assessor in the name of the last known assessee, or the fact that the mailing address for the last tax bill is the same address as the property. During the personal contact, Tax Collector staff explains how the property can be redeemed.

##### 3. New Online Auction System

The Tax Collector conducts the tax sale by online public auction.

The Tax Collector is using a new online auction system this year, called Realauction.com, which works differently from the Tax Collector's previous online auction system. Previously, all parcels were listed at once and remained open for bidding for the entire tax sale, which lasted several days. With

Realauction.com, parcels are offered at live auction one at a time, in the order of item number provided in the Tax Sale list of properties. The offering of each parcel at live auction will end after one minute with no bids or no further bids, or such longer time as the Tax Collector deems necessary. If there is a bid placed after the start of the 30 second countdown to closing the live auction on that item, the system will automatically add an additional one minute to the countdown. For example, if there are several bids on a parcel, but then no further bids for the last 30 seconds after the last highest bid, then the offering of that parcel at live auction will end unless the Tax Collector deems it necessary to extend the time for that parcel. When the offering of one parcel ends, the next parcel on the list will be offered at live auction.

The parcels will be offered at live auction one at a time beginning at 8:00 a.m. on Thursday, March 14, 2024. If all parcels have not been offered by 5:00 p.m. that day, then the sale would continue at 8:00 a.m. on Friday, March 15, 2024, until 5:00 p.m. that day. Because parcels will be offered at live auction one at a time during this limited two-day period, it is possible that some parcels, particularly the ones near the end of the list, might not be offered at live auction during that period. Any parcel that is not offered or sold during one of the tax sale days will be offered or reoffered again within 90 days after the close of the March 14-15, 2024 tax sale, on a date or dates to be selected by the Tax Collector. For that further sale, the Tax Collector is required by law to provide new notices to parties of interest in the properties to be sold.

#### 4. Proxy Bids

Bidders will be allowed to place proxy bids beginning when their \$5,000 deposit is completed and until each parcel of interest is offered at live auction. A proxy bid includes the bidder's highest acceptable bid for an item. The Realauction.com system will check all other bids on that item and enter bids on behalf of the bidder at one increment greater than the next highest bid until a bidder wins the auction or the maximum acceptable bid is reached. Bidders who place proxy bids will not be able to manually increase their bids during the auction.

#### 5. The Right of Redemption Before the Tax Sale

Any person, including the owner, may redeem the property until the close of business on the last business day before the tax sale. If the owner does not redeem the property, then the owner may purchase the property during the tax sale if the owner has complied with all the bidding requirements. Those bidding requirements include registering and posting a \$5,000 deposit. An owner that chooses to bid on the property instead of redeeming might have to pay a higher cost if other interested bidders participate and cause the sale price to increase. The right to redeem property before the tax sale will end at 5:00 p.m. on Wednesday, March 13, 2024.

#### 6. Property Sold to Highest Bidder

All properties are sold to the highest bidder. A recent change in the law, however, provides that, for nonresidential commercial property, if the highest bidder fails to consummate the sale by paying the amount due within the time specified by the Tax Collector, then the Tax Collector may offer the property to the next highest bidder at their price. The amount of the next highest bid would still need to be at least the minimum bid for the property. Also, if a property was previously offered and sold at another tax sale more than a year before the date of the proposed tax sale, but that prior sale was not consummated by the highest bidder, and that property is sold at the proposed tax sale and the highest bidder does not consummate the sale within the time specified by the Tax Collector, then the Tax Collector may offer that property, regardless of type, for sale to the next highest bidder at their bid price. The recommended Resolution includes this change in the law. The Tax Collector intends to use this new authority if necessary to ensure that as many tax-defaulted properties as possible are returned to tax-paying status.

#### 7. Reduced Minimum Bids

When property has been offered for sale, but no acceptable bids are received at the statutory minimum sale

price, Revenue and Taxation Code section 3698.5 allows the Tax Collector, with your Board's approval, to offer the same property at a reduced minimum bid that the Tax Collector deems appropriate in light of the most current assessed valuation of that property, or any unique circumstance with respect to that property.

The Tax Collector recommends that your Board approve offering properties that have not sold during two or more prior tax sales at a reduced minimum bid at the start of the auction. The Tax Collector would reduce the minimum bid for properties that have not sold during two or more prior tax sales to a price that the Tax Collector deems appropriate. That might include reductions of greater than 50 percent. When the minimum bid is reduced, the County does not typically recover all of the penalties, costs, and fees that are attached to the tax defaulted property and may affect the base tax recovery as well.

For this year's tax sale there are 29 parcels out of the total of 288 to be offered for sale remain unsold from prior tax sales, including 8 parcels that remained unsold through two or more prior tax sales. If your Board authorizes the Tax Collector to reduce minimum bids as recommended, 29 parcels of 288 total parcels would be affected during the March 14 through 15, 2024 tax sale. Such reductions would be as the Tax Collector deems appropriate, potentially including reductions greater than 50% from the minimum bid amounts. The Tax Collector determines the amount of the reduction by considering a variety of factors including assessed value, the location, condition, and type of the property, and number of years previously offered.

If any property is not offered or sold at the tax sale, the Tax Collector recommends your Board approve that it may be offered or reoffered, on a date or dates selected by the Tax Collector, within 90 days after the close of the March 14-15, 2024 tax sale. If your Board authorizes the Tax Collector to reduce minimum bids, then minimum bids may also be reduced as described above for properties that are reoffered during that period, which may include properties other than the 29 parcels that remain unsold from prior tax sales.

#### 8. Key Provisions in Resolution

The recommended resolution authorizes the Tax Collector conduct the tax sale and confirms that the terms and conditions of sale for any property sold at the tax sale shall be solely as provided by the statutes governing sales of tax-defaulted property by the County, including Division 1, Part 6, Chapter 7 (beginning with section 3691) of the Revenue and Taxation Code.

The recommended resolution provides that the commencement date of the tax sale is Thursday, March 14, 2024, and that the close of business on the last business day prior to that date is 5:00 p.m. Pacific Time on Wednesday, March 13, 2024.

The recommended resolution authorizes the Tax Collector to reduce the minimum bids on previously offered properties. The recommended resolution also authorizes the Tax Collector to offer or reoffer, on a date or dates selected by the Tax Collector, within 90 days after the close of the tax sale, any properties that are not offered or sold during the tax sale, and to reduce minimum bids for that reoffering.

The recommended resolution provides that nothing within it is a waiver or modification of the statutory protections provided to the County by any statute, including Revenue and Taxation Code section 3692.3, which provides that the County and its employees acting in their official capacity in preparing, conducting, and executing the tax sale, are not liable for known or unknown conditions of the any property sold at the tax sale, or for the failure of any device that is not owned, operated, and managed by the state or the County that prevents a person from participating in the tax sale. The recommended resolution further confirms that if the resolution itself, or any communication of the County or any of its officials, employees, vendors, or agents, conflicts with the statutes governing the sale of tax-defaulted property by the County, including all immunities of the County, then the provisions of the statutes control.

#### REFERENCE MATERIAL:

BAI #22, December 14, 2021

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Attachment 1 - Tax Sale List

On file with Clerk - Resolution Approving a March 2024 Sale of Tax-Defaulted Properties Subject to Tax Collector's Power to Sell

CAO ANALYST:

Paige Benavides