

# LIDSTONE & COMPANY

## BARRISTERS AND SOLICITORS

### MEMORANDUM

**TO:** British Columbia Clients  
**FROM:** Colleen Burke  
**DATE:** May 21, 2020  
**RE:** COVID-19 Local Government Finance Order M159/2020  
**FILE:** 99999-097

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The Minister of Public Safety and Solicitor General has issued Ministerial Order M159, dated May 15, 2020, which extends the date for municipalities and regional districts to prepare annual reports this year from June 30<sup>th</sup> to August 31<sup>st</sup>, and provides local governments with authority to:

- borrow money from capital reserve funds to address operational shortfalls in the 2020 calendar year; and
- extend the repayment date for borrowing in anticipation of revenue to December 31, 2021.

As well, Order M159 authorizes municipalities and improvement districts to enact bylaws to defer the date of the 2020 annual tax sale until September 27, 2021 (or November 10, 2021 for Vancouver), with the tax sale being on the deferred date in respect of the upset price. The bylaw must be adopted on or before August 31<sup>st</sup> this year. Public notice is not required, but owners of property subject to the deferral must be notified in writing within 2 weeks of the date the bylaw is adopted. Delinquent taxes remain so for 2021, with interest charges carried as applicable under the *Community Charter*, *Vancouver Charter*, and *Local Government Act* respectively.

Municipalities may also, by bylaw adopted on or before August 31<sup>st</sup>, extend the tax sale redemption period for properties subject to redemption period ending this year to September 27, 2021 (November 10, 2021 for Vancouver) with similar notice requirements.

### Temporary Borrowing Power

Further to earlier Provincial announcements, described in our Bulletin of April 16, 2020, statutory restrictions on the use of capital reserves have been

relaxed for this “COVID-19” year, 2020, to help municipalities, regional districts and improvement districts deal with operational shortfalls.

Order M159 authorizes borrowing from a reserve fund established under

- *Community Charter*, s. 188, for municipalities;
- *Local Government Act*, s. 377, for regional districts;
- *Local Government Act*, s. 706, for improvement districts;
- *Vancouver Charter*, ss. 193D (5)(d) and (8); 201A, 306 (7) to (9) and 523D (16) - 17.1) for the City of Vancouver;
- *Greater Vancouver Sewerage and Drainage District Act*, s. 34.1, for the Greater Vancouver Sewerage and Drainage District; and
- *Greater Vancouver Water District Act*, s. 57.1, for the Greater Vancouver Water District.

The money borrowed may be used for any operational shortfall in the 2020 calendar year, at the discretion of the council or board, despite the restrictions against using funds in a reserve set out in s. 189 of the *Community Charter* s. 189 and the other statutory provisions mentioned above, as they would normally apply. Money borrowed pursuant to this Order is not subject to interest but must be repaid to the reserve fund from which it came on or before December 31, 2025. Outstanding money unpaid at that time must be added to the 2026 financial plan, budget or estimates, as applicable, as a cash transfer to the reserve, plus a penalty of 5% of the debt outstanding as of that date.

### **Borrowing in Anticipation of Revenue**

For the local governments mentioned above, the time for repaying debt incurred as borrowing in anticipation of revenue in 2020 has been extended under Division 2 of Order M159 to the earlier of

- the date when the anticipated revenue with respect to which the borrowing was authorized is received, (or)
- December 31, 2021.

The City of Vancouver, the Greater Vancouver Sewerage and Drainage District, and the Greater Vancouver Water District are not currently included in the definition of a “public institution” under the *Municipal Finance Authority Act* for the purposes of obtaining financing by the Municipal Finance Authority; but section 9 of the Order authorizes MFA to enter agreements with those local government bodies to provide financing in anticipation of collecting taxes or rates, as applicable, as if each were a public institution under that Act.