AGENDA REQUEST & STAFF REPORT

MEETING DATE: July 15, 2024

SUBJECT: General Administrative Policy No. GA-26 – Tax Foreclosed and Tax Deeded Property: Management and Disposition Policy

RECOMMENDED MOTION:
Move approval of County Administrator signature of County General Administrative Policy No. GA-26.

BACKGROUND AND POLICY IMPLICATIONS:
The United States Supreme Court, in *Tyler v. Hennepin County* (2023) 598 U.S. 631 ("*Tyler"),* determined that the surplus value of tax foreclosed property (when the value of the property seized is greater than the tax debt) is protected by the Fifth Amendment's Takings Clause. Furthermore, in 2024, the Oregon State Legislature passed HB 4056, which, in part, required each county to establish a process by which surplus proceeds are determined, implement notification procedures for the surplus proceeds to interested parties, determine who has the right to surplus proceeds, and deposit surplus proceeds in an interest-bearing account until there is any distribution of surplus proceeds.

As a result of the *Tyler* case, County staff (Tax, Property Management and Legal) created a Real Property Surplus Funds Claim Application that is utilized when a claim demand is received (Attachment 1). Staff now seeks to further memorialize its processes for tax foreclosed and tax deeded properties with the creation and adoption of County General Administrative Policy No. GA-26. Policy No. GA-26 incorporates necessary changes resulting from the *Tyler* case and HB 4056, which includes (1) a departure from the prior distribution requirements outlined in ORS 275.275 in exchange for a payout of surplus funds upon review and approval of a Claim Application and (2) requiring the holding of any unclaimed funds in an interest-bearing account for two (2) years.

County staff has made additional suggested changes to its prior processes in light of the *Tyler* case. First, Policy No. GA-26 encourages the sale of all tax deeded properties at public auction, with limited exceptions. Prior to the *Tyler* decision, Property Management would select certain properties to place on its annual auction, which resulted in a number of tax deeded properties being sold years after acquisition or not being sold at all. Requiring the sale of most tax deeded properties that are acquired in the future will provide a prompt

and more accurate determination of surplus funds that may be owed to the prior property owners. In limited situations where Property Management decides not to sell a property, an appraisal will be obtained to determine the fair market value of the property to assist in determination of any surplus funds.

Policy No. GA-26 also recommends that at future auctions tax deeded properties will have an assigned minimum bid of the property costs and fees, as defined in the policy. If the property is not sold, the property can be sold by private sale in accordance with ORS 271.330 or maintained in the County's inventory.

Additionally, purchasers of tax deeded properties will now be required to pay the full purchase price within thirty (30) calendar days of the auction. The County will no longer carry contracts or purchase agreements for publicly auctioned properties, post auction sales, and other private sales unless otherwise directed by the Board.

Lastly, Policy No. GA-26 establishes a 90-day claim period for property owners to claim any surplus proceeds arising from future auctions. Failure to submit a Claim Application within the 90-day claim period will be deemed a waiver of any right to the possible proceeds.

BUDGET IMPACTS:
No budget impacts as a result of approving Policy No. GA-26, but there is a change to the prior distribution of sale proceeds of tax deeded proceeds due to the *Tyler* decision. Since *Tyler*, the distribution of sale proceeds per ORS 275.275 now requires that prior property owners be provided the opportunity to claim any surplus proceeds before distribution.

ATTENDANCE:
Kimberly Riley, Sr. Assistant Legal Counsel
Kristie Bollinger, Property Manager
Robert Tintle, Chief Finance Officer