

ORDINANCE NO. 2003-11-072

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON RELATING TO THE DISPOSITION OF SURPLUS REAL PROPERTY REPEALING BELLINGHAM MUNICIPAL CODE CHAPTER 4.84, AND ADOPTING NEW CHAPTER 4.84, "DISPOSITION OF SURPLUS REAL PROPERTY."

WHEREAS, the City of Bellingham has found ambiguities and inconsistencies in its code provisions dealing with the declaration and disposition of surplus property; and,

WHEREAS, the City's has a substantial interest in revising said provisions to have uniform and easily applied procedures in dealing with surplus property issues in order to provide better notice to potential buyers and to minimize staff time.

NOW THEREFORE, THE CITY OF BELLINGHAM, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1: Chapter 4.84 of the Bellingham Municipal Code is hereby repealed in its entirety.

Section 2: A new Chapter 4.84 to the Bellingham Municipal Code, titled "Disposition of Surplus Real Property" is hereby adopted and shall be numbered and shall read as follows:

4.84.010 - Policy And Procedures For Disposition Of City-Owned Real Property

A. **Policy.** The City Council declares that it is in the public interest for real property held by the City to be returned to the tax rolls, if it is not needed for some present or future municipal use and if it can be sold for a reasonable return. It is therefore the policy of the City to dispose of all real property in which the City holds a fee interest, where such property is surplus to its current or future needs, and where such disposition would afford the City a reasonable return from the transaction. For purposes of this Chapter, "reasonable return" means sale at an amount equal to, or greater than the appraised value (see subsection 4.84.030, A.). For purposes of this Chapter, "surplus property" means both real property for which the City has no current or future need, as well as real property, which, if disposed of, would be put to a higher or better use for the community at large.

B. **Procedures.** Unless authorized for Special Disposition Process by the City Council (Section 4.84.070), real property declared surplus may be disposed of for a reasonable return by any of the following means (as further detailed in Section 4.84.030):

- (1) sealed bid,
- (2) auction, or
- (3) negotiated sale.

C. **Special Disposition Process.** In cases where the public interest in a reasonable return is outweighed by the public benefit, due to factors such as (by way of illustration and not limitation) the unique character or development potential of a given property, the City Council may designate such

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property for disposal by Special Disposition Process, including disposal at less than appraised value, pursuant to Section 4.84.070, below. The Special Disposition Process may include (without limitation) sale by any of the methods set forth at subsection B. above, options to purchase, lease purchase transactions, or other commonly used, commercially reasonable means of disposal.

4.84.015 - Real Estate Review Committee Established

A real estate review committee (the "Committee") is hereby established which shall advise the City Council with respect to the disposal of real property owned by the City. The Committee shall be composed of:

- A. The Finance Director,
- B. The City Attorney or designee, and
- C. The department head or administration representative most directly affected by the property transaction.

4.84.020 - Surplus Property Declaration

A. Whether due to (i) a specific request to purchase City owned real property, or (ii) as a result of the annual review set forth at Section 4.84.060 below, or (iii) otherwise, real property owned by the City may be declared surplus by the City Council after the following procedures have been completed:

(1) The Committee shall prepare a written report (the "Report"), which may include any or all of the following information, as applicable, for each parcel under consideration ("Subject Parcel"):

- (a) Description of the Subject Parcel's size and its general location;
- (b) Description of the circumstances under which the Subject Parcel was obtained;
- (c) Description of what funds were used to initially acquire the Subject Parcel;
- (d) Recommendation as to which fund the proceeds from its sale should be credited;
- (e) Description of what municipal use the Subject Parcel has been put to in the past, if any, and what use, if any, for which it might be held;
- (f) Recommendation as to whether the Subject Parcel should be disposed of or retained;
- (g) Appraised value of the Subject Parcel;
- (h) Whether further appraisal before sale is recommended and the type of appraisal required (see Section 4.84.030, A.2.);
- (i) Whether the Subject Parcel is only usable by abutting owners or is of general marketability;

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(j) Whether special consideration ought to be given to some other public agency that has a use for the Subject Parcel;

(k) Whether the Subject Parcel should be sold at auction, by sealed bid or by negotiation;

(l) Whether the Subject Parcel should be designated for the Special Disposition Process; and

(m) Recommendation as to whether any special covenants or restrictions should be imposed in conjunction with sale of the Subject Parcel.

(2) A public hearing shall be held to consider the surplus declaration of the Subject Parcel. Notice of said hearing shall be published in the City's official newspaper and mailed to all property owners within three hundred (300) feet of the Subject Parcel not less than ten (10) days nor more than twenty-five (25) days prior to the hearing.

B. Following Council's review of the Report, and conclusion of the public hearing, the Council shall determine whether the Subject Parcel shall be declared surplus. Upon making a declaration of surplus, the Council shall also make the following determinations:

(1) Whether the Subject Parcel should be sold by sealed bid, at auction, or through negotiated sale;

(2) Whether the Subject Parcel should be sold through the Special Disposition Process;

(3) Whether special covenants or restrictions should be imposed as a condition of the sale; and

(4) Whether a further appraisal is necessary in setting the minimum acceptable price, in accordance with Section 4.84.030, A., below.

C. All requests to purchase City property shall be directed to the Finance Director with a copy to the City Attorney.

4.84.030 - Sale Procedure

The following procedures and requirements shall apply to property sold as surplus by the City:

A. Determination of Value/Minimum Acceptable Price.

(1) If the City has a sufficient and acceptable appraisal of the Subject Property, as determined by the Committee, no additional appraisal shall be required unless some other reason indicates that such should be obtained.

(2) If the Committee determines that no sufficient and acceptable appraisal is available, the Committee shall choose one of the following three (3) types of appraisals to be conducted by an appraiser:

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- (a) Limited opinion of value,
- (b) Short form appraisal report, or
- (c) Full narrative appraisal report.

All interested parties shall be notified and advised of the cost of obtaining an appraisal. The party that becomes obligated to purchase the Subject Parcel, whether by sealed bid, auction or negotiated sale, shall be obligated to reimburse the City fifty percent (50%) of the cost of the appraisal no later than at closing.

(3) Whether surplus property is to be disposed of by sealed bid, auction or negotiated sale, interested parties shall be advised that the minimum acceptable price shall be the value determined by the sufficient and acceptable appraisal plus reimbursement of fifty percent (50%) of the cost of the obtaining said appraisal (as required by 4.84.030 A. 2, above).

B. Processes/Earnest Money/Time to Closing.

(1) **Disposition by Sealed Bid.** Where a Subject Parcel is sold by sealed bids, any and all bids submitted must be accompanied by a bid deposit in the form of a cashier check payable to the City Finance Director in the amount of five thousand dollars (\$5,000). Such deposit accompanying the successful bid shall be deposited into escrow until closing on the purchase of the Subject Parcel and payment of the remaining amount of the purchase price shall be made within thirty (30) days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the City as liquidated damages and not as a penalty, since the calculation of actual damages due to time lost, transactional expenses and etc. will be difficult, if not impossible, to accurately calculate (such damages, as just defined, being referenced hereafter as "Liquidated Damages"); provided, however, that the purchaser may, at his option, deposit an additional five thousand dollar (\$5,000) extension fee (hereinafter "Extension Fee"), in which case his time to make full payment shall be extended for one (1) additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty-day period, an additional one thousand dollars (\$1,000) may be retained by the City from the Extension Fee as Liquidated Damages relevant to the additional lost time and expense. The remainder of the Extension Fee shall be returned to the purchaser. The City Council reserves the right to waive any irregularities in the bid process.

(2) **Disposition by Auction.** Where property is sold at auction, the prevailing bidder must immediately tender a cash deposit or certified check for deposit into escrow as earnest money to the City Finance Director in the amount of five thousand dollars (\$5,000). Payment of the remaining amount of the purchase price shall be made within thirty (30) days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the City as Liquidated Damages; provided, however, that the purchaser may, at his option, deposit an additional five thousand dollar (\$5,000) Extension Fee, in which case his time to make full payment shall be extended for one (1) additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty-day period, an additional one thousand dollars (\$1,000) may be retained by the City from the Extension Fee as Liquidated Damages relevant to the additional lost time

and expense. The remainder of the Extension Fee shall be returned to the purchaser.

(3) Disposition by Negotiated Sale. Where property is sold by negotiated sale, the purchaser shall deposit earnest money into escrow in the amount of five thousand dollars (\$5,000) within three (3) business days of execution of a purchase and sale agreement for the purchase of the Subject Parcel. Payment of the remaining balance of the purchase price shall be made within thirty (30) days, unless otherwise specified in the purchase and sale agreement. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become non-refundable and may be retained by the City as Liquidated Damages; provided, however, that the purchaser may, at his option, deposit an additional five thousand dollars (\$5,000) Extension Fee, in which case his time to make full payment shall be extended for one (1) additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty-day period, an additional one thousand dollars (\$1,000) may be retained by the City from the Extension Fee as Liquidated Damages relevant to the additional lost time and expense. The remainder of the Extension Fee shall be returned to the purchaser.

C. Notification of Sale of Surplus Property. In the event the Subject Parcel is to be disposed of by sealed bid or by auction, the following notification procedures shall be followed:

(1) A notice of the City's intent to dispose of the Subject Parcel shall be conspicuously posted on the property no less than two (2) weeks prior to the date set to commence accepting bids or the date set for the auction.

(2) A similar notice shall be posted on the bulletin board at City Hall.

(3) Notice shall be published in the City's official newspaper no less than once each week in two (2) consecutive weeks preceding acceptance of sealed bids or the public auction. All notices shall include a description of the Subject Parcel, the procedure by which the Subject Parcel is to be disposed of, any earnest money deposits which must be made (in accordance with Section 4.84.030, B. [1] through [3]) and the minimum price that will be accepted.

D. Form of Conveyance. All conveyances shall be made by quitclaim deed.

E. Closing Costs. All closing costs, exclusive of deed preparation, shall be borne by the purchaser including, but not limited to, survey work, title insurance if desired, recordation costs, brokerage and escrow fees if applicable, and the costs set forth in subsection 4.84.030, A. 3.

4.84.040 - Sale To Abutting Owners

If the Subject Parcel can only be put to its highest and best use when aggregated with an abutter's property because of its size, shape, topography, or other restriction, the Subject Parcel may be negotiated for sale to the abutter, provided:

A. The abutter is willing to purchase for the appraised value of the Subject Parcel;

B. If more than one qualifying abutter expresses interest in purchasing the Subject Parcel, the City Council may solicit sealed bids from all; and

- C. A person shall not be deemed to be an abutter if a right-of-way separates his property from the Subject Parcel unless the City has agreed to vacate the right-of-way in question or purchase will allow a higher and better use of the abutter's property not otherwise permitted.

4.84.050 – Intergovernmental Transfers

Intergovernmental transfers of real property shall be made in accordance with RCW Chapter 39.33, RCW Section 43.09.210 and/or any other applicable statutes.

4.84.060 - Annual Review Of City Real Estate Holdings

The City Finance Director shall annually request a departmental review of all the City's current real estate holdings so as to determine which currently held properties, if any, should be declared surplus to the City's needs and what properties, if any, currently designated as surplus should be redesignated.

4.84.070 - Special Disposition Process

A. If the City Council finds at the surplus property hearing that a Subject Parcel should be disposed of by Special Disposition Process, the City Council may direct City staff to proceed with the Special Disposition Process as described in subsection 4.84.010 (C).

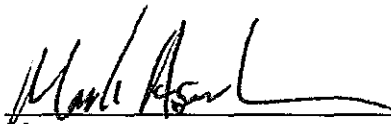
B. The City may publish a request for proposals ("RFP") and/or request for qualifications ("RFQ") in the City's official newspaper with a submission deadline of not less than thirty (30) days from the date of first publication. City Staff shall review all submitted proposals and/or qualifications and the City Council shall, by resolution, set the date for a second public hearing. Notice of such public hearing shall be published in the City's official newspaper at least fifteen (15) days prior to the hearing and shall inform the public that submitted proposals and/or qualifications relevant to the Special Disposition Process are available at City Hall for viewing. All persons shall be given an opportunity to provide comment on the received proposals and/or qualifications. Council reserves the right to reject any or all proposals and/or qualifications.

PASSED by the Council this 3rd day of November, 2003.



Council President

APPROVED by me this 6th day of November, 2003.



Mayor

Attest: 

Finance Director

Approved as to form:

Les E. Broadway
Office of the City Attorney

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