

ORDINANCE NO. 2016-07-021

AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING CHAPTER 4.84 OF THE BELLINGHAM MUNICIPAL CODE, DISPOSITION OF SURPLUS PROPERTY.

WHEREAS, BMC 4.84 outlines the procedure for the disposition of real property surplus to the City's needs; and

WHEREAS, certain provisions of BMC 4.84 contain ambiguous language and require clarification; and

WHEREAS, certain provisions of BMC 4.84 require revision to reflect current real estate transaction procedures;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN as follows:

Section 1. Bellingham Municipal Code Chapter 4.84 is hereby amended as follows:

Chapter 4.84

DISPOSITION OF SURPLUS REAL PROPERTY

Sections:

4.84.010 Policy and procedures for disposition of city-owned real property.

~~4.84.015 Real estate review committee established.~~

~~4.84.020 Surplus property declaration.~~

4.84.0230 Sale procedure.

~~4.84.040 Sale to abutting owners.~~

4.84.0350 Intergovernmental transfers.

~~4.84.060 Annual review of city real estate holdings.~~

~~4.84.070 Special disposition process.~~

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 the market value as determined by the Real Estate Review Committee (the "committee") an amount equal to, or greater than the appraised value (see BMC 4.84.0230(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. Real Estate Review Committee. 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:

1. The finance director;
2. The city attorney or designee; and
3. The department head or administration representative most directly affected by the property transaction. [Ord. 2003-11-072]

B. Procedures. Unless authorized for special disposition process by the city council (BMC 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 BMC 4.84.030):

1. Sealed bid;
2. Auction; or
3. Negotiated sale.

4.84.020 Surplus property declaration.

CBA. Surplus property declaration pProcess. Whether due to (1) a specific request to purchase city owned real property, or (2) as a result of the annual review set forth at BMC 4.84.060, or (23) 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 BMC 4.84.030(A)(2));
 - i. Whether the subject parcel is only usable by abutting owners or is of general marketability;
 - 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 300 feet of the subject parcel not less than 10 days nor more than 25 days prior to the hearing.
- DB. Council Determinations. 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, which may be completed through a Request for ProposalsFP, a Request For Qualifications, Multiple Listing Service or any other process;
 - 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 BMC 4.84.030(A).
- C. All requests to purchase city property shall be directed to the finance director with a copy to the city attorney. [Ord. 2003-11-072].

~~EC. 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 property for disposal by special disposition process, including disposal at less than fair marketappraised value (without limitation) sale by any of the methods set forth herein, pursuant to BMC 4.84.070. The special disposition process may include (without limitation) sale by any of the methods set forth at subsection (B) of this section, options to purchase, lease purchase transactions, or other commonly used, commercially reasonable means of disposal. City staff shall review all submitted proposals and/or qualifications and the city council shall, by resolution, set the date for a special dispositionsecond public hearing. Notice of such public hearing shall be published in the city's official newspaper at least 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. [Ord. 2003-11-072].~~

~~D. The procedures for disposition of city-owned real property as provided in this chapter shall not apply to transfers of real property by the city of Bellingham public development authority. Transfer of city-owned real property to the Bellingham public development authority and subsequent sale shall be governed by state law, RCW 35.21.730 through 35.21.755, as now constituted or hereafter amended. [Ord. 2009-01-002; Ord. 2003-11-072].~~

~~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. [Ord. 2003-11-072].~~

~~4.84.020 Surplus property declaration.~~

~~A. Whether due to (1) a specific request to purchase city-owned real property, or (2) as a result of the annual review set forth at BMC 4.84.060, or (3) 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 BMC 4.84.030(A)(2));~~
- ~~i. Whether the subject parcel is only usable by abutting owners or is of general marketability;~~
- ~~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 300 feet of the subject parcel not less than 10 days nor more than 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 BMC 4.84.030(A).~~
- ~~C. All requests to purchase city property shall be directed to the finance director with a copy to the city attorney. [Ord. 2003-11-072].~~

4.84.0230 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 information regarding the valuation 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 valuation information appraisal is available, the committee shall choose one of the following three types of appraisals to be conducted by an appraiser:
 - 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 50 percent 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 equivalent to the value determined by the sufficient and acceptable appraisal plus reimbursement of 50 percent of the cost of obtaining said appraisal (as required by subsection (A)(2) of this section).

B. Processes/Earnest Money/Time to Closing.

1. Disposition by Sealed Bid. The successful bidder will be required to deposit in the form of cashier's check~~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's check payable~~ to the city finance director or in any other immediately available funds in an amount acceptable to the City, but no less than the amount of \$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 30 days or at execution of a purchase and sale agreement, but no later than 60 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become nonrefundable 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, transaction 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 amount acceptable to the City, but no less than \$5,000, as an extension fee (hereinafter "extension fee"), in which case his time to make full payment shall be extended for one additional 60-day period. In the event full payment is not made by the conclusion of the additional 60-day period, an additional \$34,000 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 an amount acceptable to the City, but no less than \$5,000. Payment of the remaining amount of the purchase price shall be made within 30 days. In the event the purchaser is unable to pay the remaining amount within the required time, the earnest money deposit shall become nonrefundable and may be retained by the city as liquidated damages; provided, however, that the purchaser may, at his option, deposit an additional amount acceptable to the City, but no less than \$5,000, as an extension fee, in which case his time to make full payment shall be extended for one additional 60-day period. In the event full payment is not made by the conclusion of the additional 60-day period, an additional \$31,000 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 City and the prospective purchaser shall enter into a purchase and sale agreement which will detail, among other issues, the deposit earnest money to be deposited for the into escrow in the amount of \$5,000 within three 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 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 nonrefundable and may be retained by the city as liquidated damages; provided, however, that the purchaser may, at his option, deposit an additional \$5,000 extension fee, in which case his time to make full payment shall be extended for one additional 60-day period. In the event full payment is not made by the conclusion of the additional 60-day period, an additional \$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 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 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 subsections (B)(1) through (3) of this section) 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 (A)(3) of this section.~~ If the property disposition is by negotiated sale, then all closing costs, excepting the cost of the appraisal, shall be negotiated between the parties.[Ord. 2003-11-072].

~~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. [Ord. 2003-11-072].~~

~~4.84.0350 Intergovernmental transfers.~~

~~Intergovernmental transfers of real property shall be made in accordance with Chapter 39.33 RCW, RCW 43.09.210 and/or any other applicable statutes. [Ord. 2003-11-072].~~

~~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. [Ord. 2003-11-072].~~


~~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 BMC 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 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 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~~

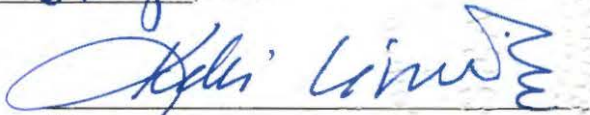
~~the received proposals and/or qualifications. Council reserves the right to reject any or all proposals and/or qualifications. [Ord. 2003 11 072].~~

PASSED by Council this 11th day of July, 2016



Council President

APPROVED by me this 20th day of July, 2016.



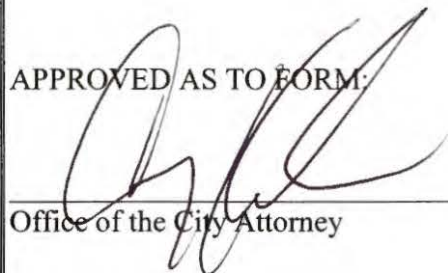
Mayor

ATTEST:



Finance Director

APPROVED AS TO FORM:



Office of the City Attorney

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