

ORDINANCE NO. 4812

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELLENSBURG, WASHINGTON, AMENDING CHAPTER 2.06 "SALE OF REAL PROPERTY" OF THE ELLENSBURG CITY CODE.

WHEREAS, in November 2016, the Ellensburg City Council amended Chapter 2.06 of the Ellensburg City Code – Sale of Real Property – in Ordinance 4748 to update the procedures for the sale, disposition or lease of real property owned by the City of Ellensburg (City); and

WHEREAS, there is a significant need for affordable housing in the City for those households with incomes under 80 percent of area median income (AMI); and

WHEREAS, given the need for affordable housing, the City desires to amend the policies and procedures for the sale, disposition or lease of available surplus City-owned properties for this purpose and to provide the largest number of affordable units at or below 80 percent of AMI; and

WHEREAS, Third Substitute House Bill 2382, enacted by the Legislature as Chapter 217, Laws of 2018 of the Washington State Legislature, and effective June 7, 2018, authorizes state or local governments to dispose of surplus property for a "public benefit," which is defined as "affordable housing for low-income and very low-income households . . . and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons; and

WHEREAS, 3SHB 2382 requires the governing body to enact rules to regulate such dispositions, and the City desires to amend Chapter 2.06 ECC to provide procedures for the sale, disposition or lease of City-owned surplus property with what is required to implement the provisions of 3SHB 2382;

NOW, THEREFORE, the City Council of the City of Ellensburg, Washington do hereby ordain as follows:

Section 1. Chapter 2.06 of the Ellensburg City Code, as last amended by Ordinance No. 4748, is hereby amended to read as follows:

Chapter 2.06

SALE, DISPOSITION OR LEASE OF SURPLUS REAL PROPERTY

Sections:

- 2.06.020 Policy and procedures for disposition of city surplus real property.
- 2.06.040 *Repealed.*
- 2.06.080 Surplus real property resolution.
- 2.06.100 Sale procedure.
- 2.06.120 *Repealed.*
- 2.06.160 *Repealed.*

- 2.06.200 *Repealed.*
- 2.06.220 Trade of surplus real property.
- 2.06.240 Lease of surplus public property.
- 2.06.260 Utility property – Intergovernmental sale or lease over \$50,000.

2.06.020 Policy and procedures for disposition of city surplus 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 for tangible and intangible consideration equal to, or greater than, the appraised fair market value. 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, which property has been determined to be surplus by the city council.

B. Procedures. Real property declared surplus may be disposed of for a reasonable return or to benefit the public interest by sealed bid, auction, negotiated sale or special disposition process.

C. Special Disposition Process. In cases where the public interest in a maximum financial or economic 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 or use for a public benefit purpose as affordable housing, the city manager may recommend for city council approval the disposal of property by a special disposition process which may include disposal for less than the appraised fair market value or for other cognizable forms of consideration in addition to or in lieu of monetary payment to the city. The special disposition process may include (without limitation) sale or transfer by any of the methods set forth in this section, options to purchase, lease purchase transactions, or other commonly used, commercially reasonable means of disposal. Approval for special disposition of property under this section shall include written findings of the city council setting out and supporting the basis for the city council’s decision that the public benefit of disposal pursuant to this section outweighs the public interest in a maximum financial or economic return. [Ord. 4748 § 1, 2016.]

2.06.040 Authority for conveyance.

Repealed by Ord. 4748. [Ord. 188 § 1, 1893.]

2.06.080 Surplus real property resolution.

A. Real property owned by the city may be declared surplus by the city council after the following procedures have been completed:

1. The city manager shall include the following information in the staff report to council for each parcel under consideration:

- a. Description of the subject parcel's size, general location, and legal description;
- 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, if any, should be credited;
- e. History of municipal use, if any, or uses for which it might be held;
- f. Value of the subject parcel and whether further appraisal before sale is recommended and the type of appraisal required per ECC 2.06.100(A)(2);
- g. Whether the subject parcel is only usable by abutting owners or is marketable;
- h. Whether special consideration ought to be given to some other public agency that has a use for the subject parcel;
- i. Whether the subject parcel should be sold at auction, by sealed bid, or by negotiation;
- j. Recommendation as to whether any special covenants or restrictions should be imposed in conjunction with sale of the subject parcel; ~~and~~

k. For land acquired for public utility purposes, whether the land is no longer required to provide continued public utility service; and

1. Whether the subject parcel should be transferred for a public benefit purpose as provided in RCW 39.33.015, as now existing or hereafter amended.

2. A public hearing shall be held to consider the surplus declaration for the subject parcel. Notice of said hearing shall be published in the city's official newspaper and mailed to all property owners within 500 feet of the subject parcel not less than 10 days or more than 25 days prior to the hearing.

B. Following the public hearing, the council shall determine whether the subject parcel shall be declared surplus. Any declaration of surplus property shall be made by resolution. The resolution shall also make the following determinations:

1. Whether the subject parcel should be sold by sealed bid, at auction, ~~or~~ through a negotiated sale, or through a transfer for a public benefit purpose as provided in RCW 39.33.015, as now existing or hereafter amended;

2. Whether special covenants or restrictions should be imposed as a condition of the sale; and

3. The minimum acceptable price, if any, in accordance with ECC 2.06.020(B) and 2.06.100. [Ord. 4748 § 1, 2016; Ord. 188 § 2, 1893.]

2.06.100 Sale procedure.

The following procedures and requirements shall apply to the sale of surplus property:

A. Determination of Value/Minimum Acceptable Price.

1. If the city has a sufficient and acceptable appraisal of the subject property, no additional appraisal shall be required.

2. If an acceptable appraisal is not available, the city manager shall obtain a:

- a. Limited opinion of value for properties under \$25,000;
- b. Short form appraisal report for properties under \$50,000; or
- c. Full narrative appraisal report.

B. Sale by Bid or Auction. 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 for the close of bids or the date set for the auction.
2. Notice shall be published in the city's official newspaper at least once each week for three consecutive weeks preceding the deadline for the submittal 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 and the minimum price that will be accepted.

C. Negotiated Sale. 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:

1. The abutter is willing to purchase for the fair market value of the subject parcel as determined under subsection (A) of this section;
2. If more than one qualifying abutter expresses interest in purchasing the subject parcel, the city council may solicit sealed bids from all; and
3. A person shall not be deemed to be an abutter if a right-of-way separates his property from the subject parcel unless the purchase will allow a higher and better use of the abutter's property.

D. Earnest Money/Time to Closing.

1. Disposition by Sealed Bid or Auction. Where a subject parcel is sold by sealed bids or auction, any and all bids submitted must be accompanied by a bid deposit in the form of a cashier's check payable to the city of Ellensburg in the amount of five percent of the bid or \$5,000, whichever is greater. Such deposit accompanying the successful bid shall be deposited into an administrative trust account until closing on the purchase of the parcel and 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 as liquidated damages; provided, however, that the purchaser may deposit an additional \$5,000 extension fee, in which case the time to make full payment shall be extended for an additional 30 days. In the event full payment is not made by the conclusion of the additional period, all deposits shall be retained as liquidated damages for lost time and expense. The city council reserves the right to waive any irregularities in the bid process.

2. Disposition by Negotiated Sale. Where property is sold by negotiated sale, the purchaser shall deposit earnest money into escrow in the amount of \$5,000 or five percent of the sale price, whichever is greater, within three business days of execution of a purchase and sale agreement for the purchase of the subject parcel. Earnest money forfeitures and sale extensions under subsection (D)(1) of this section shall apply.

E. Form of Conveyance. All conveyances shall be made by quitclaim deed or such other form of conveyance and upon such terms as determined by the city attorney.

F. 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, recording costs, and escrow fees if applicable. [Ord. 4748 § 1, 2016.]

G. Transfer for Public Benefit Purpose. The provisions of subsections A through F of this section are not required for transfers of surplus utility property for public benefit purpose as provided in RCW 39.33.015, as now existing or hereafter amended.

2.06.120 Deed, form and contents.

Repealed by Ord. 4748. [Ord. 188 § 3, 1893.]

2.06.160 Public hearing – Considerations.

Repealed by Ord. 4748. [Ord. 3621 § 1, 1988; Ord. 3018 § 1, 1974.]

2.06.200 Public hearing – Notice – Resolution adoption.

Repealed by Ord. 4748. [Ord. 3621 § 2, 1988; Ord. 3018 § 2, 1974.]

2.06.220 Trade of surplus real property.

Surplus real property may be traded under the following conditions:

A. If the city manager determines that the disposal of real property declared surplus under this chapter could realize greater benefit to the city through consideration other than cash, the city manager may invite prospective purchasers to tender consideration of cash and/or property. Upon receipt of a bid or offer tendering in-kind consideration, and prior to accepting such bid or offer, the city manager shall make a report to city council during a formal meeting setting forth the benefits of such a transaction.

B. Before accepting any bid or offer containing in-kind consideration, an adequate appraisal shall have been made by a qualified independent appraiser.

C. If the city council finds that the bid or offer containing the in-kind consideration has more value or benefit to the city than any other bid or offer submitted, the city manager may accept the bid or offer containing in-kind consideration. [Ord. 4748 § 1, 2016.]

2.06.240 Lease of surplus public property.

The city manager may authorize the lease or sublease of any property, including real property, under such terms and conditions as the city manager may deem desirable, fair and appropriate, either by use of negotiations or bidding in the best interests of the city, or a transfer for a public benefit purpose as provided in RCW 39.33.015, as now existing or hereafter amended. Leases of

real property shall not be granted for a period, including options or extensions, of more than five years and/or over \$25,000 in value unless authorized by the city council. [Ord. 4748 § 1, 2016.]

2.06.260 Utility property – Intergovernmental sale or lease over \$50,000.

A. Prior to the sale or lease of city public utility real property, the city council shall, by resolution, surplus and authorize the sale or lease of said property following a public hearing pursuant to the provisions of RCW 35.94.040; and

B. Prior to the sale or lease of surplus city property having an estimated value of more than \$50,000 to another governmental entity, the city council shall hold a hearing following notice pursuant to the provisions of RCW 39.33.020. [Ord. 4748 § 1, 2016.]

C. The provisions of subsections A and B of this section shall not be required for transfers of surplus property for a public benefit purpose as provided in RCW 39.33.015 and 35.94.040(3), as now existing or hereafter amended.

Section 2. Severability. If any portion of this ordinance is declared invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion(s) of this ordinance.

Section 3. Corrections. Upon the approval of the City Attorney, the City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days after its passage, approval and publication.

The foregoing ordinance was passed and adopted at a regular meeting of the City Council on the 5th day of November, 2018.


MAYOR

ATTEST:



CITY CLERK

Approved as to form:



CITY ATTORNEY

Publish: 11-8-18

I, Coreen M. Reno, City Clerk of said City, do hereby certify that Ordinance No. 4812 is a true and correct copy of said Ordinance of like number as the same was passed by said Council, and that Ordinance No. 4812 was published as required by law.



COREEN M. RENO