

**RESOLUTION NO. 24-1058**

**A RESOLUTION ESTABLISHING POLICIES RELATING TO THE SALE OF SURPLUS PROPERTY IN THE CITY OF OLATHE, KANSAS.**

**WHEREAS**, the City of Olathe, Kansas (“the City”) occasionally acquires real property for various purposes including the construction of public roads, sewers, and water line projects (“public projects”); and

**WHEREAS**, the City acquires such real property through various mechanisms, including but not limited to, arm’s length purchase transactions, gift, and eminent domain; and

**WHEREAS**, the City may from time to time, determine that some of the property is not needed for public purposes and may wish to designate such excess property as “surplus real property”; and

**WHEREAS**, the City, from time to time, receives inquiries from parties interested in obtaining surplus real property from the City who wish to develop or make other productive use of such property; and

**WHEREAS**, surplus real property may, on a case by case basis, be put to its highest and best use if it were transferred to another party who could develop the property and add to and diversify the City’s tax base and/or provide a unique economic, social, or cultural opportunity for the City.

**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:**

**SECTION ONE. 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 Resolution, “reasonable return” means sale at an amount equal to, or greater than the appraised value. “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.

**SECTION TWO. Procedures.** Unless authorized for Special Disposition Process by the City Council or City Manager, real property declared surplus may be disposed of for a reasonable return by any of the following means:

- A. Sealed bid,
- B. Auction, or

C. Negotiated sale.

**SECTION THREE. 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 appraised value. The Special Disposition Process may include (without limitation) sale by any of the methods set forth at Section 2 above, options to purchase, lease purchase transactions, or other commonly used, reasonable means of disposal.

**SECTION FOUR. Real Estate Review Committee Established.** A real estate review committee (the "Committee") is hereby established which shall advise the City Council or City Manager with respect to the disposal of real property owned by the City. The Committee shall be composed of:

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

**SECTION FIVE. Surplus Property Declaration.**

A. Whether due to (1) a specific request to purchase City owned real property, or (2) as a result of a review set forth at Section 8, or (3) otherwise, real property owned by the City may be declared surplus by the City Council or City Manager 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;
- 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 the sale of the Subject Parcel.

B. Following the City Council's or City Manager's review of the Report, the City Council or City Manager shall determine whether the Subject Parcel shall be declared surplus. Upon making a declaration of surplus, the City Council or City Manager 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 to the sale; and
- 4. Whether a further appraisal is necessary in setting the minimum acceptable price.

C. All requests to purchase City property shall be directed to the City Manager or his/her designee.

D. In accordance with the City's Purchasing Manual, disposal of surplus real property with a value of ~~\$50,000~~ \$100,000 or more shall be approved by the Governing Body. Disposal of surplus real property with a value less than ~~\$50,000~~ \$100,000 shall be approved by the City Manager.

**SECTION SIX. 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 Parcel, 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:
  - a. Limited opinion of value,
  - b. Short form appraisal report, or
  - c. Full narrative appraisal report.

**B. Process/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's check payable to the City 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, transaction expenses and etc. will be difficult, if not impossible, to accurately calculate (such damages, as just defined, being referenced hereafter as "Liquidated Damages"). However, the purchaser may at his/her option, deposit an additional Five Thousand Dollars (\$5,000) extension fee (hereinafter "Extension Fee"), in which case his/her time to make full payment shall be extended for one additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty (60) 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 or City Manager 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 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/her option, deposit an additional Five Thousand Dollars (\$5,000) Extension Fee, in which case his/her time to make full payment shall be extended for one additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty (60) 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 as specified in the real estate contract. 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/her option, deposit an additional Five Thousand Dollars (\$5,000) Extension Fee, in which case his/her time to make full payment shall be extended for one additional sixty (60) day period. In the event full payment is not made by the conclusion of the additional sixty (60) 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 procedure shall be followed:

1. If possible, 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. Notice shall be posted on the City's website or other format as approved by the City Manager. 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 paragraph B. subsections 1 through 3 above) and the minimum price that will be accepted.

D. **Form of Conveyance.** All conveyances shall be made by quitclaim deed or warranty deed, as determined to be in the best interests of the City.

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 appraisal costs set forth above.

F. **Buyer's Responsibility.** The buyer of surplus property shall be responsible for obtaining, as needed, a certificate of survey and any zoning or plan approvals.

**SECTION SEVEN. 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/her 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.

**SECTION EIGHT. Review of City Real Estate Holdings.** The City Manager may periodically 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.

**SECTION NINE. Special Disposition Process.**

A. If the City Council finds 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 Section 3.

B. The City may advertise a request for proposals ("RFP") and/or request for qualifications ("RFQ") on the City's website or other format as approved by the City Manager. City staff shall review all submitted proposals and/or qualifications and the City Council shall, by resolution, set the date for a public hearing. All persons shall be given an opportunity to provide comment on the received proposals and/or qualifications. The City Council reserves the right to reject any or all proposals and/or qualifications.

**SECTION TEN. Intergovernmental Transfers.** The City shall give preference to other governmental users in disposing of surplus real property, including, but not limited to units of school, county, and state government.

**SECTION ELEVEN. Property Acquired by Eminent Domain.** In accordance with K.S.A. [26-501b](#), any real property the City has acquired after July 1, 2007 by eminent domain from a private property owner for the purpose of selling, leasing, or otherwise transferring to any private entity is authorized if:

- A. The property is deemed excess (surplus) real property that was taken lawfully and incidental to the acquisition of right-of-way for a public road, bridge or public improvement project including, but not limited to a public building, park, recreation facility, water supply project, wastewater and water disposal project, storm water project and flood control and drainage project;
- B. The private property owner has acquiesced in writing to the taking;
- C. The property has defective or unusual conditions of title including, but not limited to, clouded or defective title or unknown ownership interests in the property;
- D. Unsafe for occupation by humans under the building codes of the City;
- E. Expressly authorized after July 1, 2007 by the Kansas Legislature by specific enactment of law.

**SECTION TWELVE. Property Acquired as Part of a Flood Control Project.** When the City endeavors to construct a project which will improve flood control and alleviate downstream stormwater management problems within a Johnson County-designated stream corridor (a "Flood Control Project"), the City will assess whether any homes affected by the Flood Control Project will need to be improved, relocated, or purchased and demolished.

**A. Improved or Relocated Homes.** Homes impacted by a Flood Control Project which may either be structurally improved (so that the home elevation and lowest adjacent grade is raised), or relocated to another lot in Olathe must meet the City's Floodplain Development Ordinance (as set forth in Chapter [18.30](#) of the Unified Development Ordinance, as amended). All structural improvements must be approved by the City and the Johnson County Stormwater Advisory Council ("SMAC"), and cannot negatively impact the functionality of the home or the aesthetics of the surrounding neighborhood. All structural improvements for a home remaining at its original location would be conducted by the City's construction contractor to ensure compliance with all applicable regulations through final inspection by the City. All costs and associated responsibilities for a home relocated to another lot would be borne by the purchaser of such home.

**B. Acquired Properties – Buyout Process.** If a homeowner whose home is affected by a Flood Control Project where either structural improvements or structure relocation is infeasible, the City will offer to voluntarily buyout the affected

home. Per SMAC program requirements, homes purchased as part of a Flood Control Project must be appraised to establish fair market value. All voluntary buyout offers will include funds to cover moving and relocation expenses above the appraised fair market value offer. All homes purchased with SMAC funding will be either relocated or demolished by the City. Should a homeowner decline to participate in the voluntary buyout program, the homeowner will be informed that they have waived their right to participate in any future SMAC-funded projects.

**C. Acquired Properties – Disposition and Salvage Process.** Any real property acquired by the City as part of a Flood Control Project may be sold by Special Disposition Process as described in Section 3. After a voluntary home buyout participant has relocated from their home acquired by the City as part of a Flood Control Project, but prior to demolition or relocation of such home, the City will advertise the homes' availability for purchase and relocation in accordance with Section 6. If acceptable bids are received for relocation of the home, the City may coordinate relocation of the home to another lot provided by the successful purchaser. If no acceptable bids are received for relocation of the home, the home will become available for City salvage and training opportunities. Items including water heaters, furnaces, air conditions, cabinets, or other fixtures will be available for reuse in other City housing programs or for salvage by not-for-profit organizations. When salvage is complete, the Police and Fire Departments will be notified that vacant homes are available for training purposes.

**D. Re-Building on Acquired Properties.** If the City determines that a property can be re-graded and made buildable, any future structures constructed on such property must meet applicable City floodplain development criteria and related freeboard requirements, as well as any applicable neighborhood development covenants, conditions and/or restrictions. The City will review any future residential construction plans on property acquired as part of a Flood Control Project to ensure that structures constructed on such property are of a similar quality and architectural standard as structures in the existing residential neighborhood or commercial development in the area.

**E. Un-Buildable Properties.** If a property acquired as part of a Flood Control Project cannot be re-graded and made buildable, such property will be evaluated by the City Parks Department to determine whether the property can be re-used for park, open space, and/or trail purposes. If such re-use cannot be made by the Parks Department, the property will be made available to the adjacent property owner and may be sold by Special Disposition Process as described in Section 3.

**F. Re-Sale of Acquired Properties.** In accordance with SMAC regulations, no property acquired by the City as part of a Flood Control Project using SMAC funds may be re-sold to a private party for the purposes of flood-proofing and re-using an existing structure on the acquired property.

**SECTION THIRTEEN. Proceeds.** Any proceeds from the sale of surplus real estate and any improvements thereon, after deduction of the expenses of such sale and



any cost of appraisal of the surplus real estate, shall be deposited in the City's building maintenance fund of the general fund, unless otherwise authorized by state or federal law or by the limitations or restrictions of the City's title to the real estate being sold.

**SECTION FOURTEEN. Additional Guidelines.** If the City acquired the surplus real property by use of state or federal funds, the sale of such property shall comply with any and all applicable state and/or federal guidelines regarding disposition of surplus real property, including approval by state and/or federal agencies as needed.

**SECTION FIFTEEN. Authority of Governing Body.** The Governing Body reserves the right to deviate from any policy, but not any procedural requirements of state law, when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that are in the best interests of the City.

**SECTION SIXTEEN. Previous Resolution Repealed.** Resolution No. 16-1036 is hereby repealed.

**SECTION SEVENTEEN. Effective Date.** This Resolution shall take effect immediately.

**ADOPTED** by the Governing Body this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SIGNED** by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Mayor

(SEAL)

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney