



Real Property Reuse Committee Report

City of Newton In City Council

Tuesday, September 19, 2017

Present: Councilors Albright (Chair), Brousal-Glaser, Crossley, and Danberg

Absent: Councilors Lennon, Gentile, Fuller, and Kalis

City staff present: Ouida Young (Associate City Solicitor)

#92-16 Amendments to the Real Property Reuse Ordinance

COUNCILORS ALBRIGHT AND KALIS requesting amendments to Chapter 2, Section 7. Sale or lease of city owned real property, of the City of Newton Revised Ordinance, 2012 (The Real Property Reuse Ordinance) to clarify how properties are classified in regards to purpose, use, and ownership; the procedure to handle reused properties; and to address any other changes that might be needed. [02/17/16 @ 12:04 PM]

Action: Real Property Reuse Held 4-0

Note: The Committee continued its ongoing discussion on proposed amendments to the real property reuse ordinance. The committee members reviewed the attached draft flow chart of the real property reuse process provided by Councilor Kalis. Ouida Young suggested changing the reference in Box 3 from Clerk to Mayor to reflect the current practice of the Mayor docketing a reuse item with the City Council. The Chair marked up the attachment to include the waiver of the formation of a Joint Advisory Planning Group (JAPG) by a majority vote of the City Council and a requirement for a Planning Department Report if the Council waives the JAPG because there is no building on the subject property and no plans to develop the subject property.

Ms. Young reviewed the major proposed changes to Chapter 2, Section 7 of the Ordinances, which deals with the sale or lease of city-owned real property. The draft ordinance with proposed amendments incorporated is attached. In the first paragraph and where applicable, language is added to clarify that if a city agency changes the use or purpose of real property under its control, it will follow the reuse process. The draft ordinance language contains a provision to allow for a public hearing prior to the City Council making an initial determination on the reuse of a property. The public hearing notice will be in accordance with Massachusetts General Law Chapter 40A, Section 11. In addition, there is new language to clarify that the City Council is able to change its initial determination regarding the disposition and use of the subject property.

There is amended language related to the formation of a Joint Advisory Planning Group (JAPG) if the threshold decision is to lease or sell a City owned property to an outside agency. The new language reduces the membership of the JAPG to no more than fourteen members, clarifies the appointing authorities, and extends the timeframe for the JAPG to submit its report to the Real Property Reuse Committee from 90 days to 180 days from the date when all members of the JAPG are appointed with the understanding that the Committee can extend the time. It also specifically

states that the JAPG should consider possible continued municipal use when identifying alternatives for the future use of the property. The new language also removes the requirement for a Planning Department report if there is a JAPG report. There is new language that states that the Real Property Reuse may waive the formation of a JAPG if there is no building on the property that may be available for reuse. If there is no JAPG, the Planning Department will provide a written report. The Planning Department report would be submitted to the Real Property Reuse Committee within 180 days from the date of the formation of a JAPG is waived. The City Council will assign a public hearing to occur not less than 30 days but no more than 60 days from submission of the report and notice the meeting in accordance with Massachusetts General Law Chapter 40A, Section 11. Ouida Young explained that the Committee should consider adding language regarding timing following the submittal of a Planning Department report if the Real Property Reuse Committee waives the JAPG. The proposed ordinance makes it clear that the City Council is taking two votes on a City property that is available for reuse. The first vote is to recommend the disposition and future use of the property and the second to determine whether to authorize the mayor to sell or lease the property and set the minimum financial terms for sale or lease.

The requirement that the Real Property Reuse Committee makes its recommendation within 60 days of the public hearing following the submittal of a report remains. The Reuse Ordinance states that the Committee recommendation should be consistent with the goals and policies of the Comprehensive Plan. There was discussion around the addition of future master planning essentially amending the Comprehensive Plan and whether there should be language stating that the recommendation take into consideration any subsequent planning documents. Ms. Young needs to look at Charter language regarding the comprehensive plan and disposition. The text of the Charter related to the implementation of the Comprehensive Plan is below.

Sec. 7-3. Implementation of the Comprehensive Plan. (a) Land Use and Development Regulations—In accordance with the General Laws, the city council may by ordinance adopt land use and development regulations including, but not limited to, an official map and zoning regulations. (b) Urban Renewal—In accordance with the General Laws, the city council may by ordinance provide for redevelopment, rehabilitation, conservation and renewal programs for the alleviation or prevention of slums, obsolescence, blight or other conditions or deterioration. (c) Action by the City Council—Before acting on any proposed ordinance concerning land use and development regulations, urban renewal or expenditures for capital improvements, where the ordinance involves a matter covered by the comprehensive plan, the city council shall refer the proposal to the planning and development board which shall, within a time specified by the city council and prior to the public hearing on the proposed ordinance, report in writing its recommendations on the proposal. Upon adopting any such ordinance, the city council shall make findings and report on the relationship between the ordinance and the comprehensive plan and the comprehensive plan shall be deemed to be amended in accordance with the findings and report.

A Committee member suggested adding language to ensure that if a City department declares a property available for reuse but needs to continue uses that take place on that property, a plan is in place for moving the uses to a new location. Ms. Young stated that it may not need to be part of the ordinance but there should be a plan. The Real Property Reuse Committee should

ask what relocation plans are in place for any continuing uses and hold the reuse item for a response.

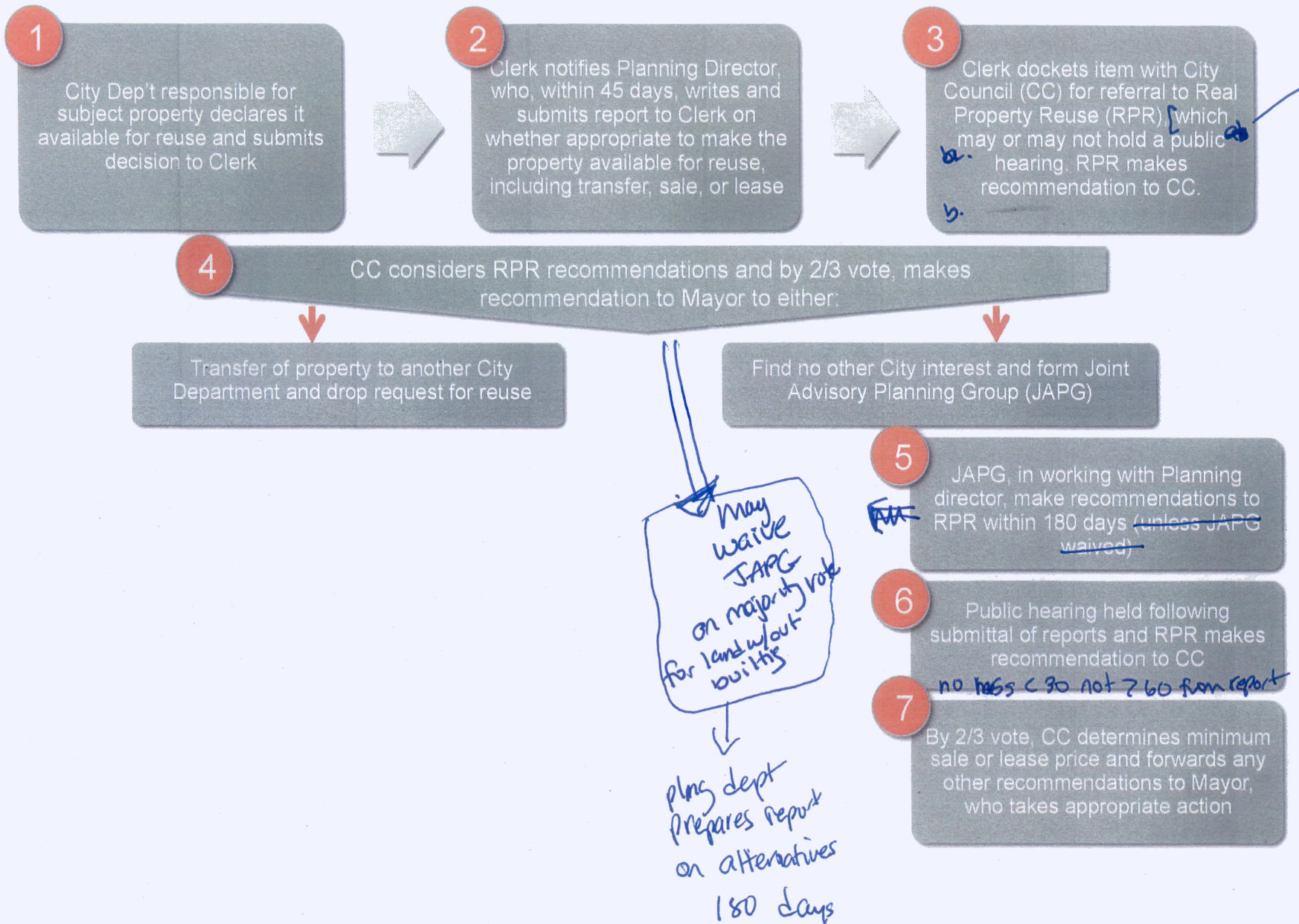
Ms. Young is still working on amendments to the portion of the real property ordinance that relate to the lease of city owned property for wireless communication equipment, solar panels, and public utility easements. The proposed ordinance should include clear language stating that the committee responsible for public facilities should discuss and act on any public utility easements. It may make sense to use energy generation equipment instead of solar panels to capture other energy equipment. The Committee agreed to change the references to solar panels to energy generation equipment in the proposed ordinance. Ms. Young expects to complete the work on this portion of the real property reuse ordinance over the next several weeks and have a red line draft with all the proposed amendments available for a Committee meeting in November.

There were no other items for discussion and the Committee adjourned at 8:15 PM.

Respectfully submitted,

Susan S. Albright, Chair

Step by Step Real Property Reuse Process



November 3, 2016 edits revised July 14, 2017

Sec. 2-7. Disposition of interests in city owned real property.

A. Whenever a vote is taken or a policy decision has been adopted by the appropriate city agency or officer to declare any city owned real property or portion thereof available for potential sale or lease, or for continued use of such real property by the city agency or officer for a different purpose, the procedure for determining the use to which the real property shall be put and the terms of any disposition thereof shall be in accordance with the provisions of this section. Notwithstanding the foregoing, an easement in city owned real property or the lease of city owned real property for the purpose of wireless communication equipment or solar energy generation shall be granted in accordance with the procedures in subsection () of this section.

- (1) The city agency or officer declaring said property available for sale or lease, or for use by the same city agency or officer for a different purpose, shall submit to the mayor a written record of the vote or policy decision and shall also state whether such sale or lease shall be conditioned upon continued municipal use of the real estate for the same or a different municipal purpose. The mayor may docket such vote or decision with the clerk of the council who shall forthwith notify the director of planning and development of such vote or decision. Within forty-five (45) days of said notification, the director of planning and development shall submit a written report to the clerk of the council with recommendations as to whether this property, or any portion thereof, should be transferred to another city agency or officer or declared available for sale or lease including any conditions regarding continued municipal use.. Upon receipt of the report of the director of planning and development, the clerk of the council shall place the matter on the docket of the city council for referral to its real property reuse committee. The membership of the real property reuse committee shall include one councilor from each ward in the city, to be designated by the president of the city council. The chairman of the real property reuse committee shall be designated by the president of the city council.
- (2) The real property reuse committee shall oversee the following steps:
 - a) There shall be an initial determination made as to whether some or all of the subject property shall continue to be used by the sending city agency or officer, transferred to another city agency or officer, or made available for sale or lease including any conditions regarding continued municipal use. Prior to making this initial determination, the real property reuse committee may hold a public hearing to solicit public comment. Notice of said public hearing shall be provided in accordance with G.L. c. 40A, §11 as amended. If the real property reuse committee decides that the property continue to be used by the sending city agency or officer or to be transferred to the care, custody, management or control to another city agency or officer, then this recommendation shall be referred to the city council. In such event, the city council may, by a vote of two-thirds (2/3) of the full city council, transfer the care, custody and control of the subject property to another city agency or officer, or to the same city agency or officer for use for another purpose subject to the approval of the mayor, pursuant to G.L. c. 40, § 15A. Should the vote to transfer the subject property to another city agency or officer or to the same city agency for use for another purpose fail to pass by the required two-thirds vote, then the subject property shall return to the sending agency for use for the same purpose.
 - b) In the event that the initial decision of the real property reuse committee is to make some or all

of the subject property available for sale or lease including any conditions regarding continued municipal use, a joint advisory planning group (the "JAPG") shall be created. The JAPG shall consist of not more than nine (9) persons, five (5) members to be appointed by the president of the city council and four (4) members to be appointed by the mayor. The real property reuse committee may make recommendations regarding the qualifications of the members of the JAPG. The JAPG shall elect its own chairperson. It shall be the responsibility of the JAPG to work with the department of planning and development to identify alternatives for the future use of the subject property, including possible continued municipal use. The JAPG shall file a written report containing its recommendations to the real property reuse committee within one hundred and eighty (180) days from the date when all members have been appointed, or within such further time as the real property reuse committee may permit.

- c) Notwithstanding the foregoing, in the case of the potential sale or lease of all or a portion of city owned real property without buildings thereon, the real property reuse committee may, upon a majority vote, waive the requirement contained in subparagraph (2)(b) that there be created a JAGP. In the event that the requirement for a JAPG is waived, the department of planning and development shall prepare a written report to identify alternatives for the future use of the subject property, including possible continued municipal use and shall file such report with the real property reuse committee within one hundred and eighty (180) days from the date the committee waives creation of the JAPG, or within such further time as the real property reuse committee may permit.
- d) Following submission of the JAGP report to the real property reuse committee, the item shall be assigned by the city council for a public hearing before said committee, which hearing shall be held not less than thirty (30) days nor more than sixty (60) days from the date of submission of said report. The purpose of this hearing shall be to hear the views of the public and all interested parties with regard to the future use of the subject real property. Notice of said public hearing shall be provided in accordance with G.L. c. 40A, § 11 as amended. The public hearing required by this subparagraph may be held on the same night on which the real property reuse committee votes to waive the requirement that a joint advisory planning group be created, but in any event shall such public hearing be held no more than sixty (60) days from the date the real property reuse committee votes to waive such requirement.
- (3) Following the public hearing, the real property reuse committee shall make its recommendation to the city council. In making its recommendation the real property reuse committee shall take into account the effect of the proposal on the neighborhood and on the city as a whole and determine that its recommendation is consistent with the goals and policies of the Comprehensive Plan for the City of Newton. The committee's recommendation shall include recommendations as to (1) the disposition and future use of the subject real property which may include a recommendation that the City not dispose of the subject real property but the property be returned to the sending agency or transferred to another city agency or officer; (2) the specific use characteristics of the subject real property, including recommendations with respect to zoning and other land-use controls; and (3) the minimum financial terms for sale or lease of the property or any portion or portions thereof.
- (4) The city council shall, within sixty (60) days from receipt of the recommendation of the real property reuse committee, submit its recommendations by resolution to the mayor for the disposition and future use of the subject real property, and may authorize the use of the subject real property, and may authorize the mayor to sell or lease the subject real property and set the minimum financial terms for such sale or lease. The recommendation of the city

Comment [OCMY1]: We got rid of the competing reports by both the Planning Dept. and the JAPG in the Nov. revisions, but if there is no JAPG, so you want some recommendation from the Planning Dept? And if so, we need to revise the timing a bit in subpara. D that follows.

council shall require a vote of two-thirds (2/3) of the full city council. Should the vote on the recommendation to the mayor fail to pass by the required two-thirds vote, then the subject property shall return to the sending agency for use for the same purpose.

- (5) Requests for the sale or lease of city owned property, including the abandonment of the city's rights in real property, shall first be made to the city agency or officer having custody of such property. The provisions of section 2-7 shall apply in the event that such city agency or officer declares such property available for sale or lease.

These provisions need to be revised into a single procedure that also addresses the easement issue.

- (8) In any instance where the lease of city owned property for wireless communication equipment is subject to the requirement of a special permit pursuant to section 30-6.9, the following procedures shall apply:
 - a) The executive department shall submit a proposal for such lease to the city council for approval which proposal shall indicate the location of the city owned property for which a lease is sought and such other relevant information as may be available as to the likely types of wireless communication equipment that may be placed at the site. In preparing the proposal, the executive department consultation shall be made with such city departments, councilors for the ward involved and neighborhood groups as the executive department may consider appropriate.
 - b) At the earliest opportunity, the city council shall, for the purposes of this section, assign the proposal for public hearing before its committee dealing with matters of public buildings and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the city owned real property which is proposed for lease and to the abutters of such abutters. Said notice shall include the location of the property proposed for lease for wireless equipment and, if available, a description as to the likely types of wireless communication equipment that may be placed at the site. The committee shall deliberate and, if recommending approval, may affix such restrictions and conditions to the lease terms, other than financial conditions, as it deems in the public interest. The committee shall make a recommendation to the city council within forty-five (45) days following the public hearing as to whether the proposed lease is in the public interest.
 - c) Within sixty (60) days of receipt of the committee report, the city council shall vote as to whether to authorize the mayor to lease such city owned property for wireless communication

equipment. If the vote is in the affirmative, then the mayor may proceed to issue a request for proposals on such terms and conditions as determined by the mayor to be in the public interest. If the vote is in the negative, then the mayor shall not lease such property for wireless communication equipment, provided, however, that nothing herein shall be construed to preclude the council from authorizing the mayor to lease such property pursuant to a subsequent request to lease such property.

- d) The requirement of notice and a public hearing may be waived by a three-fourths vote of those members of the city council present and voting.
- (9) In any instance where the lease of city owned property for solar panels is part of an arrangement under which the city uses power produced by the solar panels and/or receives net metering credits pursuant to state law, the following procedures shall apply:
- a) The executive department shall submit a proposal for such lease to the city council for approval. Such proposal shall indicate the location of the city owned property for which a lease is sought and such other information as may be available regarding the likely types of solar panels and related equipment that may be placed at the site. In preparing the proposal, the executive department shall consult with such city departments, councilors for the ward involved and abutting property owners as the executive department may consider appropriate, taking into account the procurement requirements applicable under the General Laws.
 - b) At the earliest opportunity, the city council shall, for purposes of this section, assign the proposal for public hearing before its committee dealing with matters of public buildings and/or other city owned real property and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the city owned real property which is proposed for lease and to the abutters of such abutters. Said notice shall include the location of the property proposed for lease for solar panels and related equipment and, if available, a description as to the likely types of solar panels and related equipment that may be placed at the site. The committee shall deliberate and, if recommending approval, may affix such restrictions and conditions to the lease terms, other than financial conditions, as it deems in the public interest. The committee shall make a recommendation to the city council within forty-five (45) days following the public hearing as to whether the proposed lease is in the public interest.
 - c) Within sixty (60) days of receipt of the committee report, the city council shall vote as to whether to authorize the mayor to lease such city owned property for solar panels and related equipment. If the vote is in the affirmative, then the mayor may proceed on such terms and conditions as determined by the mayor to be in the public interest. If the vote is in the negative, then the mayor shall not lease such property for solar panels and related equipment, provided, however, that nothing herein shall preclude the council from authorizing the mayor to lease such property pursuant to a subsequent request to lease such property.
 - d) The requirement of notice and public hearing under subsection (9)(b) may be waived by a three-fourths vote of those members of the city council present and voting.
- (10) In any sale of city owned real property for which community preservation funds have previously been expended to rehabilitate or restore historic resources pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, such real property shall be bound by a perpetual historic preservation restriction pursuant to G.L. c. 184, sec. 31-33 held by the City or its designee, in a form acceptable to the Massachusetts Historical Commission.

- (11) The requirements of this section that are not otherwise required by law or by charter may be waived in whole or in part by a two-thirds (2/3) vote of those members of the city council present and voting.
(Rev. Ords. 1973, § 2-10; Ord. No. 222, 6-6-77; Ord. No. 315, 2-20-79; Ord. No. S-52, 4-2-84; Ord. No. S-52A; Ord. No. T-31, 6-5-89; Ord. No. T-212, 1-21-92; V-209, 11-2-98; Ord. No. X-196, 03-06-06; Ord. No. X-243, 12-4-06; Ord. No. Z-28, 05-19-08; Ord. No. Z-106, 04-02-12)