



Real Property Reuse Committee Report

City of Newton In City Council

Thursday, November 16, 2017

Present: Councilors Albright (Chair), Crossley, and Danberg
Absent: Councilors Lennon, Brousal-Glaser, 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 Recommended Approval 3-0

Note: Associate City Solicitor Ouida Young provided the attached summary of the Committee's recommended amendments to the Real Property Reuse Ordinance, which she reviewed with the Committee members. The proposed amendments reflect what is the Council and Administration's practice as it pertains to disposition of municipal property. Both the current real property reuse ordinance and the proposed ordinance are attached for review. The attached September 19, 2017 Committee report details discussion on most of the proposed amendments. The Committee members discussed the following amendments and added additional language to add additional clarity the process. The amendments include the following:

1. A change to the section title from "Sale or lease of city owned real property" to "Disposition of interests in city owned real property". The change modernizes the language and makes it clear that there are other options of disposing of municipal property other than sale or lease.
2. The draft ordinance contains an amendment stating that the Mayor may docket the request to sell or lease municipal property. In past practice, the Mayor docket requests to the City Council to potentially declare a property available for sale or lease and this amendment codifies this practice. The draft ordinance retains the language stating that the Planning Department provides a report to the Council within 45 days after the request is docketed that includes a recommendation to whether the property should be transferred to a different department within the City or made available for lease or sale.
3. An opportunity for the Real Property Reuse Committee to hold a public hearing before any decision to retain or make property available for sale or lease is included in the draft. The Committee is not required to hold a hearing but can if they deem it necessary.

4. In both the current and proposed Real Property Reuse Ordinance, it is clear that when the Real Property Reuse Committee makes an initial recommendation to retain custody of municipal property within the same department or to transfer it to a different municipal department, the City Council votes on the Committee's recommendation. In this case, if the City Council is voting on a recommendation for approval, the Council must approve the recommendation by a 2/3 vote of the Council.

Ms. Young pointed out that although the current ordinance does not require a Council vote if the Committee's initial recommendation on a property is to sell or lease the property, traditionally the Committee makes an initial recommendation to the City Council to sell or lease property and the Council votes on the recommendation. There was a question of whether to add language requiring a Council vote to the proposed ordinance. Committee members discussed whether to include language but ultimately, decided that the initial determination should not require Council vote. The members recommended adding language to state that if the committee's initial determination is to make some or all of a subject property available for sale or lease, the matter will continue to be held in the Real Property Reuse Committee and a joint advisory planning group (JAPG) created to provide a written report with recommendations to the committee.

5. The amendments include a smaller JAPG membership. The current maximum membership is 14 and the proposed membership is a maximum of nine members, five of which are appointed by the president of the City Council and four appointed by the Mayor.
6. The ordinance requirement that the JAPG provide a report within 90 days of the date that all the JAPG members are appointed is extended to 180 days in the proposed ordinance. This will give the JAPG enough time to provide well-thought out recommendations.
7. The amendments also remove the requirement that the Planning Department provide a separate report to accompany the JAPG report. The JAPG works with the Planning Department to develop its recommendations and the separate report by the Planning Department is not necessary.
8. The proposed ordinance retains the Committee's ability to waive the JAPG if there are no buildings on the subject property. There may be a timing issue as the Committee can opt to hold a public hearing at the same meeting where the committee votes to waive the requirement for the creation of a JAPG. If the committee waives the JAPG, the proposed ordinance requires an additional report providing alternatives for the future use of the subject property from the Planning Department if the JAPG. If the Committee wants the second report from the Planning Department, it is not possible to hold a public hearing on the same night that the JAPG is waived.

Committee members felt that it might make sense to leave some flexibility, as to whether the committee needs a new report from the Planning Department. There was a suggestion to replace the required second report language with language stating that when the

Committee waives the JAPG, the Committee will determine if a second report from the Planning Department is required. Ms. Young included this new language in the attached draft.

9. The proposed ordinance language includes an amendment clarifying that the Committee can change its initial decision that a property be made available for sale or lease to a recommendation that the City continue to retain the property.
10. The current and amended ordinance states that the authorization for the Mayor to sell or lease the subject property requires a two-thirds vote of the full City Council. It is clear in Massachusetts General Laws that a vote to retain custody of municipal property within the same department or to transfer it to a different municipal department requires a 2/3 vote but Massachusetts Law is not clear regarding a vote requirement on selling or leasing municipal property. It would seem that selling or leasing the property to a third party is a more final disposition of property and should; therefore, require a 2/3 vote.
11. The proposed amendments preserve the simplified process to authorize the lease of municipal property for wireless communications or energy generating equipment but apply the same process for both types of leases. At this time, these leases would be referred to the Public Facilities Committee for public hearing and discussion. In addition, the proposed ordinance now includes a requirement that the Council authorize the Mayor to enter into all leases of municipal property for wireless equipment instead of just city properties that are subject to the requirement of a special permit.
12. The final amendment makes it clear that grants or relocation of easements within city property for water, sewer, or utility purposes are referred in accordance with the Council rules. Under the current Council rules, these matters would be referred to the Public Facilities Committee.

The Committee discussed the possibility of adding language to the ordinance to require a City department that declares a property available for reuse but needs to continue uses that take place on that property, provide a plan for moving the uses to a new location. The Committee discussed the merits but in the end decided that it is the Committee's responsibility to ensure that there is a plan in place for the uses and should not be included in the ordinance.

The Committee members felt that the proposed amendments to the Real Property Reuse Ordinance improved the process. Councilor Crossley made a motion to recommend approval of the amendments, which carried by a vote of three in favor and none opposed.

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

Respectfully submitted,

Susan S. Albright, Chair

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: November 16, 2017
TO: Susan Albright, Chair, Real Property Reuse Committee
FROM: Ouida C.M. Young, Deputy City Solicitor
RE: #92-16 amendments to the Real Property Reuse Ordinance

The amendments to the current provisions of Sec. 2-7 of the City Ordinances (the “Re-Use Ordinance”) which govern the sale or lease of City owned property have been revised to reflect concerns with the current ordinance that came to light over the past several years as the Real Property Reuse Committee (the “Committee”) has overseen authorization to sell or lease a number of City owned properties.

The specific changes to the Re-Use Ordinance were well-summarized in the Committee’s September 19, 2017 report and include the following new provisions:

- The Mayor docketes the request to sell or lease city owned property with the City Council. As in the current ordinance, the Planning Department will prepare a report within 45 days after the request is docketed with recommendations as to whether some or all of the property be transferred to a different department or made available for sale or lease.
- Prior to the initial decision to retain the property or to make property available for sale or lease, the Committee has the discretion to hold a public hearing on the proposal.
- As in the current ordinance, if the Committee’s initial decision is for the City to retain the property, in the custody of the same department or in the custody of a different department, the Committee’s recommendation is reported to the City Council, which may approve the recommendation by a 2/3rds vote in accordance with the requirements of Massachusetts General Laws dealing with the inter-departmental transfer of real property. *NOTE, there has been a tradition of the Committee also sending an initial recommendation to sell or lease property to the City Council for a vote, but the current ordinance does not require this step nor does do the proposed revisions.*
- If the Committee’s initial decision is to make the property available, in whole or part, for sale or lease, then a maximum 9 member Joint Advisory Planning Group (“JAPG”) is created, with 5 members appointed by the president of the City Council and 4 members appointed by the Mayor. This is a reduction in the size of the JAPG from a maximum of 14 members. The Committee would also be able to recommend that the members of the JAPG have specific qualifications.
- Under the proposed changes, only the JAPG prepares a report on the re-use of the property and the time to submit the report is extended from 90 days to 180 days. The Planning Department does not submit a competing report.

- The proposed changes continue to allow waiver of the JAPG by the Committee if there are no buildings on the property. In that event, the Planning Department prepares the report. *NOTE, need to correct timing issue with the new draft if Committee wants a new report from the Planning Department on a proposed sale or lease rather than relying on the initial report prepared by the Planning Department.*
- As in the current ordinance, a public hearing is held before the Committee and a recommendation made to the City Council, but the proposed amendment clearly allow the Committee to change its initial decision that the property be made available for sale or lease to a recommendation that the City continue to hold the property.
- The proposed changes make clear that a 2/3rds vote of the City Council is required to authorize the sale or lease of city owned property.
- The proposed changes retain the simplified process to authorize the lease of property for wireless communications or energy generating equipment, but apply the same process to both types of leases.
- Finally, the proposed changes state that grants or relocation of easements in city property for water, sewer, or utility purposes are handled in accordance with the City Council rules, which is the current practice but not clear in in the current ordinance. Grants of other types of easements in city owned property would go through the re-use process.

revised November 17, 2017

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

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, a lease of city owned real property for the purpose of wireless communication equipment or energy generation equipment shall be granted in accordance with the procedures in subsection (6) of this section. Authorization to grant or relocate easements in city owned real property for water, sewer, or utility purposes shall be granted in accordance with the city council rules and orders.

- (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 property 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 be transferred to the care, custody, management or control of 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 (2/3rds) 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 (2/3rds) 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, **the proposed reuse of the property will continue to be held in committee** and 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 a JAGP be created. In the event that the requirement for a JAPG is waived, **the committee may consider the recommendations in the written report from the director of planning and development filed with the city clerk pursuant to subsection (1) as providing sufficient information on the reuse of the property.** In the alternative, the committee may request the department of planning and development prepare an additional 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 or the additional report of the department of planning and development 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. If the real property reuse committee does not request an additional written report from the department of planning and development, 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 no event shall such public hearing be held 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 council shall require a vote of two-thirds (2/3rds) 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.
- (6) In any instance where the executive department proposes to lease city owned property for wireless communication equipment or for energy generating equipment as part of an arrangement under which the city uses power produced by such equipment and/or receives net metering credits pursuant to state law (both referred to hereinafter as "equipment"), 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 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 or neighborhood groups 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 facilities and this committee shall hold a public hearing. Due notice of such public hearing shall be provided in accordance with G.L. c. 40A, §11 as amended. Said notice shall include the location of the property proposed for lease, a description as to the likely types of 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 the 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 the 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 (6) (b) may be waived by a three-fourths (3/4ths) vote of those members of the city council present and voting.
- (7) 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.
- (8) 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 (2/3rds) 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)

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to Chapter 2 Administration

1. Delete **in its entirety Sec. 2-7. Sale or lease of city owned real property**

2. Insert the following:

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

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, a lease of city owned real property for the purpose of wireless communication equipment or energy generation equipment shall be granted in accordance with the procedures in subsection (6) of this section. Authorization to grant or relocate easements in city owned real property for water, sewer, or utility purposes shall be granted in accordance with the city council rules and orders.

(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 property 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 be transferred to the care, custody, management or control of 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 (2/3rds) 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 (2/3rds) 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, the proposed reuse of the property will continue to be held in committee and 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 a JAGP be created. In the event that the requirement for a JAPG is waived, the committee may consider the recommendations in the written report from the director of planning and development filed with the city clerk pursuant to subsection (1) as providing sufficient information on the reuse of the property. In the alternative, the committee may request the department of planning and development prepare an additional 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 or the additional report of the department of planning and development 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. If the real property reuse committee does not request an additional written report from the department of planning and development, 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 no event shall such public hearing be held 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 council shall require a vote of two-thirds (2/3rds) 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.
 - (6) In any instance where the executive department proposes to lease city owned property for wireless communication equipment or for energy generating equipment as part of an arrangement under which the city uses power produced by such equipment and/or receives net metering credits pursuant to state law (both referred to hereinafter as "equipment"), 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 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 or neighborhood groups 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 facilities and this committee shall hold a public hearing. Due notice of such public hearing shall be provided in accordance with G.L. c. 40A, §11 as amended. Said notice shall include the location of the property proposed for lease, a description as to the likely types of 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 the 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 the 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 (6) (b) may be waived by a three-fourths (3/4ths) vote of those members of the city council present and voting.
- (7) 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.
- (8) 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 (2/3rds) 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)

revised November 17, 2017

Sec. 2-7. Sale or leaseDisposition of interests in city owned real property.

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, ~~this section shall not apply to the a~~ lease of city owned real property for the purpose of wireless communication equipment ~~which is permitted as of right pursuant to section 30-6.9, provided, however, where the lease of city owned real property for wireless communication or energy generation equipment is subject to the requirement of a special permit pursuant to section 30-6.9, then~~ shall be granted in accordance with the procedures ~~outlined in subsection (8) of this section~~ (6) of this section. Authorization to grant or relocate easements in city owned real property for water, sewer, or utility purposes shall apply. ~~Notwithstanding the foregoing, this section shall not apply to the lease of be granted in accordance with the city owned real property for solar panels; provided, however, that in the case of such a lease the procedures outlined in subsection (9) of this section shall apply~~ council rules and orders.

- (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 ~~clerk of the city council~~ mayor a written record of the vote or policy decision ~~within thirty (30) days of said~~ and shall also state whether such sale or lease shall be conditioned upon continued municipal use of the real property for the same or a different municipal purpose. The mayor may docket such vote or decision. ~~The~~ with the clerk of the council who shall forthwith notify the director of planning and development of ~~said~~ such vote or decision. Within ~~thirty (30)~~ 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 ~~unnecessary~~ available for ~~at~~ sale or lease including any conditions regarding continued municipal ~~purposes~~ 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 ~~be declared~~ 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 ~~decision is made~~ real property reuse committee decides that the property continue to be ~~utilized~~ used by the sending city agency; ~~or if the decision is made~~ officer or be transferred to ~~transfer~~ the care, custody, management or control ~~over the subject property to of~~ another city agency or ~~office~~ 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~~3rds) 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 (2/3rds) vote, then the subject property shall return to the sending agency for use for the same purpose.
- b) In the event that the ~~city council does not determine that the property~~ 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, the proposed reuse of the property will continue to be ~~utilized by the sending agency or be transferred to another city agency or officer, then there shall be created~~ held in committee and a joint advisory planning group. ~~This group (the "JAPG") shall be created. The JAPG shall consist of not more than fourteen (14)~~ nine (9) persons, half ~~five (5) members to be appointed by the president of whom shall the city council and four (4) members to be appointed by the city council and half appointed by the mayor. This group~~ 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 this group ~~the JAPG to work with the department of planning and development to identify alternatives for the future use of the subject property. The joint advisory planning group and the department, 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 a JAGP be created. In the event that the requirement for a JAPG is waived, the committee may consider the recommendations in the written report from the director of planning and development shall file separate written reports containing their respective recommendations to the real property reuse committee. Such reports shall be filed simultaneously. This process shall be completed within ninety (90) days from the date of the initial referral of the matter to the real property reuse committee or within such further time as the city council may determine, with the city clerk pursuant to subsection (1) as providing sufficient information on the reuse of the property. In the alternative, the committee may request the department of planning and development prepare an additional 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.
- e)d) Following submission of the JAGP report or the additional report of the department of planning and development ~~and the report of the joint advisory planning group~~ 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 ~~reports~~ 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. If the real property reuse committee does not request an additional written report from the department of planning and development, 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 no event shall such public hearing be held more than sixty (60) days from the date the real property reuse committee votes to waive such requirement.

(3) ~~Within sixty (60) days of~~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 council shall require a vote of two-thirds (2/3rds) 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) 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 joint advisory planning group.~~

~~In such event, the city council shall utilize the report prepared by the director of planning and development as required in paragraph (1). Provided that notice as set forth in subparagraph (2)(e) has been given, the public hearing required by subparagraph (2)(e) may be held on the same night on which the real property reuse committee votes to waive the requirement that there be created a joint advisory planning group, but in any event, such public hearing shall be held no more than sixty (60) days from the date the real property reuse committee votes to waive such requirement.~~

~~(6) Notwithstanding the provisions of subparagraph (2)(a) above, proposals for inter departmental transfers of real property initiated by city departments or agencies shall not be subject to the provisions of section 2-7, but shall comply with the provisions of G.L. c. 40, § 15A.~~

~~(7)~~

(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.

~~(8)6)~~ In any instance where the executive department proposes to 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 or 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 energy generating 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 is a part of an arrangement under which the city uses power produced by the solar panels such equipment and/or receives net metering credits pursuant to state law; (both referred to hereinafter as "equipment"), 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 or neighborhood groups 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 facilities 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 provided in accordance with G.L. c. 40A, §11 as amended.~~ 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~~the 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~~the 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)(6)~~ (b) may be waived by a three-fourths ~~(3/4ths)~~ vote of those members of the city council present and voting.
- ~~(107)~~ 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.
- ~~(118)~~ 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 ~~(2/3rds)~~ 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)



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