



Real Property Reuse Committee Report

City of Newton In City Council

Monday, November 27, 2017

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

Absent: Councilor Lennon

City staff present: Ouida Young (Deputy 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 Approved 7-0

Note: The Committee approved the above item at its November 16, 2017 meeting but there was a vote to hold the item in Committee at the last full Council meeting because of three questions related to the proposed ordinance amendments. Deputy City Solicitor Ouida Young joined the Committee to respond to the questions.

The first question is whether the Real Property Reuse Committee should be required to hold an initial public hearing prior to the decision to retain municipal property, make it available for sale, or lease instead of the current proposed amendment, which gives the Committee the option to hold a public hearing at this point in the disposition process. The current ordinance and proposed amended ordinance retain the existing requirement that the Committee hold a public hearing when the Committee makes a determination to sell or lease municipal property.

By requiring the initial public hearing, it would address concerns raised by citizens regarding their ability to have input into the disposition of municipal property early in the real property process. The Council would need to decide whether to require an initial public hearing as it is a policy decision. Ms. Young informed the Committee that not all decisions to sell or lease land or buildings are controversial. Many times, it is a simple sale of property between a property owner, who abuts a small vacant municipal property that wishes to purchase that property and the City. It may not make sense to hold a public hearing in this type of case. There are expenses associated with holding public hearings such as advertising, mailing costs, and staff time.

The Committee discussed whether it makes sense to make an initial public hearing a requirement rather than an option. Some Committee members agreed that a requirement for an early public hearing would provide early notification to the public that there could be a change in use of municipal property in their neighborhood. It may make sense to add language to clarify what triggers an early public hearing threshold. It could be based on the possible uses for the

property, whether the sale or lease of property could be controversial, and/or at the request of a Real Property Reuse Committee member. Several members of the Committee felt that it is the Committee's job to determine whether an early public hearing is necessary. They moved on to discuss whether a hearing should be required if a single member of the Committee requests a public hearing or if a public hearing should only be required, if a majority of the Committee approves it. Ultimately, the Committee decided that the proposed amendments include a requirement that the Clerk's Office notify abutters no less than 10 days prior to the Committee taking up the initial determination that the Committee is considering whether to transfer municipal property to another City agency or make the property available for sale or lease. In addition, the Committee decided to retain the proposed language giving the Committee the option to hold an initial public hearing

The second question relates to why the Real Property Reuse Committee would waive the formation of a Joint Advisory Planning Group (JAPG) for properties without buildings if the Committee makes an initial determination that the City should sell or lease all or a portion of the property. It seems that there are still a number of considerations related to these types of properties and that the public should have the ability to comment. Ms. Young explained that this is a policy decision for the Committee to make but the language that speaks to waiving the JAPG is in the existing ordinance and there is no change to the language in the proposed ordinance. The language allows the Committee to waive the formation of a JAPG in this circumstance but the Committee can hold a public hearing if it deems it necessary. The Committee members agree that the language that gives the Committee the option to waive the JAPG for properties without buildings does not need to be changed.

The third question relates to what are the proposed changes to simplify the process to authorize the lease of property for wireless communications and solar generating equipment. Ms. Young explained that the simplified process for wireless antennas and solar generating equipment (changed to energy generating equipment as part of the proposed amendments) already exists in the current real property reuse ordinance. The proposed amendments include language that clarifies that authorization to grant or relocate easements in city owned property for water, sewer, or utility purposes shall be granted in accordance with the city council rules and orders, which would currently result in referral to the Public Facilities Committee similar to wireless and energy generating equipment. The Committee supported the addition of the clarification language and did not feel it was necessary to make any changes. With that, Councilor Crossley moved approval of the proposed ordinance amendments, which carried unanimously. Draft language with the proposed language regarding notification by the Clerk's Office highlighted and the draft ordinance are attached.

There were no other items scheduled for discussion and the Committee adjourned at 6:45 PM.

Respectfully submitted,

Susan S. Albright, Chair

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. The City Clerk's office shall sent out notice to the abutters to the subject property that the real property committee is considering whether to transfer the subject property to another city agency or to make the subject property available for sale or lease no less than ten (10) days prior to the committee taking up the initial determination. Prior to making this initial determination, the real property reuse committee may also 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.

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- 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.
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 - 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

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