

COMMITTEE OF THE WHOLE

09-009-0

REPLACEMENT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE MODIFYING PROCESS FOR CONVEYING CITY-OWNED REAL ESTATE, AMENDING ARTICLE XXXIII OF CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended, is hereby amended by deleting said Article as existing in its entirety and by substituting the following therefor:

Article XXXIII. Conveyance of Real Property.

Sec. 2-175. Application of Article.

This Article shall apply to the authorization of all forms of conveyance of the title or portion thereof to real property owned by the city, whether effective upon the effective date of the authorizing ordinance or executory or conditional except that this Article shall not apply to the granting of easements for roadways, sidewalks and utilities over such property.

Sec. 2-176. Preconditions to conveyance.

Prior to any conveyance governed by this Article:

(a) The city's planning agency shall have reviewed the proposed conveyance for conformity to the city's comprehensive plan and shall have reported its findings in writing to the council with regard thereto; provided that the council may dispense with the requirement of this subsection upon a finding that the proposed conveyance has no relationship to said plan, approved by a two-thirds vote of the council. For the purposes of this Section and of Minnesota Statutes Section 462.356, the city's planning agency shall be deemed to be that department or division of the city responsible for physical planning in the city and the administrator of that

department or division shall be responsible for the required review and report;

(b) The city assessor shall have provided a written estimate of the market value of the property interest sought to be conveyed. Sec. 2-177. Methods of conveyance.

Conveyances under this Article may be accomplished or implemented in the following manners:

(a) Conveyance to the highest responsible bidder pursuant to Section 2-177.1 below;

(b) Conveyance to the highest responsible bidder at auction pursuant to Section 2-177.2 below;

(c) Conveyance to another governmental agency by sale or exchange at an amount other than market value pursuant to Section 2-177.3 below;

(d) Conveyance to a party other than another governmental agency at an amount at or less than market value in order to further other city interests pursuant to Section 2-177.4 below;

(e) Conveyance to an adjacent property owner or owners of property which cannot be developed pursuant to Section 2-178 below. Sec. 2-177.1. Conveyance to the highest bidder.

(a) The city may convey any property to the highest bidder by ordinance naming the person to whom it is to be conveyed, the consideration to be paid for the property and any conditions or limitation on the conveyance, either in the ordinance or in the form of an agreement approved by ordinance. Any such agreement may contain an option to purchase with any conditions approved by the council;

(b) Conveyance pursuant to this Section shall only be approved after the availability of the property for conveyance is

suitably advertized and reasonable opportunity for notice to be received by all potential purchasers has been provided. Such advertizing can be accomplished either by direct advertizing in suitable medium or through the services of an agent or broker, in which case a prior agreement with such agent or broker shall have been authorized and entered into.

Sec. 2-177.2. Conveyance by auction.

(a) The city may, by ordinance, determine to convey any property to the highest bidder as determined by a public auction which may include internet auction. The ordinance shall establish any minimum acceptable price or reserve for the property and any conditions on the conveyance or the use of the property to be conveyed and shall authorize the conveyance to the responsible bidder bidding the highest amount for such property at the bid amount;

(b) Any proposed auction of city property shall be advertized on the city's website, if any, and at least once in a newspaper of general circulation in the city during the 30 days prior to the date of the proposed auction.

Sec.2-177.3 Conveyance to another governmental unit.

The city may convey city property to another governmental unit by sale or exchange where the council finds by ordinance that the needs of said governmental unit are greater in importance than the need of the city to retain said property and that the best interests of the citizens of the city will be best served by accomplishing such conveyance. The ordinance shall name the entity to whom it is to be conveyed, the compensation to paid for the property if any and any conditions or limitation on the conveyance.

Sec. 2-177.4. Conveyance to further city interests.

The city may convey city property to a non-governmental entity at no cost or at less than market value if the council finds by ordinance that such conveyance will further other important city interests or objectives and that such conveyance is necessary to the accomplishment of such interests. The ordinance shall name the person or entity to whom it is to be conveyed, the compensation to be paid for the property if any and any conditions or limitation on the conveyance. Said ordinance shall specifically identify and describe the interests and objectives to be furthered and shall state the reason or reasons why it is necessary to convey the property at less than market value.

Sec. 2-178. Exemption for property which cannot be developed.

If, due to existing laws or regulations, no building can legally be constructed on a parcel, the city may directly sell such parcel by ordinance to an adjacent owner or adjacent owners without competitively bidding but at a price at least equal to its market value as determined by the city assessor. If more than one adjacent owner requests the property, the council may divide the parcel and sell part to each adjacent owners. An adjacent owner is one who owns property that is contiguous with the parcel being sold and is not separated from it by a street, alley, railroad or similar improvement.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

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Department Director

Approved as to form:

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Attorney

ATTY REA:blj 3/13/2009

Approved for presentation to council:

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Chief Administrative Officer

Approved:

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Auditor

STATEMENT OF PURPOSE: This ordinance modifies the provisions of the Code pertaining to the sale of city-owned property to clarify and simplify the process and to bring it into conformity with state statutes.

After a decision has been made by staff that property should be considered by the council for conveyance, the ordinance as proposed provides for a review by planning for conformance with the comprehensive plan and for a written report thereon to the council. This is generally required by Minnesota Statutes Section 462.356. It also calls for the city assessor to provide a written estimate of value to the council.

It then clarifies that there are five methodologies by which the council can determine to convey property. First is general public bidding as is provided for in the present ordinance. The second is by public auction which could include internet auction which is not presently provided for. In this case the council would set a minimum price or reserve and would authorize the sale to the highest bidder above the reserve. The third is by sale or exchange to another governmental agency with a need for the property. The fourth would allow the council to determine to sell or convey property to specific party in furtherance of what it determined to be important city interests or objectives without necessary regard to price or bidding. And finally, the council could still sell "undevelopable" property to adjacent property owners.

The revisions do away with the requirement that the property be determined to be "surplus to the city's needs," a determination which has served little purpose as a separate step, and has clarified that not all conveyances will be sales at market, there being circumstances when the city will need to convey property in fulfillment of city objectives other than revenue raising. It also brings the process into conformance with state statute.