

## **ORDINANCE NO. 1972**

### **AN ORDINANCE OF THE CITY OF DAYTON, WASHINGTON AMENDING PORTIONS OF TITLE 8 OF THE DAYTON MUNICIPAL CODE AND ADOPTING NEW PROVISIONS RELATED TO REAL PROPERTY SURPLUS PROCEDURES AND VACATION PROCEDURES**

**WHEREAS**, the in an effort to stimulate opportunities for Affordable Housing Development, the Affordable Housing Commission (AHC) requested the Dayton Planning Commission (DPC) develop new procedures related to the surplus of publicly owned real property; and,

**WHEREAS**, the DPC reviewed and considered example ordinance provided by the Department of Commerce and applicable State Law regarding publicly owned real property; and,

**WHEREAS**, the DPC developed procedures that would enable to City to surplus real property in varying methods depending on the nature of the property in question; and,

**WHEREAS**, the AHC reviewed the final draft ordinance at a regular meeting and offered consensual support of the draft ordinance and recommended the Dayton City Council adopt the procedures as presented; and,

**WHEREAS**, the on November 18, 2020, the DPC conducted a final review of the draft ordinance and made formal motion for the City Council to adopt the ordinance as presented; and.

### **NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DAYTON, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1: New Chapter.** Dayton Municipal Code Chapter 8-13 is hereby adopted to read as follows:

#### **Chapter 8-13 – Disposition of Surplus Real Property**

##### **8-13.005. – Definitions.**

- A. "Affordable housing" has the same definition as that stated in RCW 43.63A.510(4)(a) as presently adopted or hereafter amended, namely, residential housing that is rented or owned by a person who qualifies as a very low-income, low-income, or moderate-income household or who is from a special needs population, and whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent (30%) of the household's monthly income.

- B. "Public benefit" has the same definition as that stated in RCW 39.33.015(8)(a) as presently adopted or hereafter amended, namely, affordable housing for low-income and very low-income households as defined in RCW 43.63A.510(4), and related facilities that support the goals of affordable housing development in providing economic and social stability for low-income persons.

#### **8-13.010. – Purpose and Intent.**

Primarily, the City desires to dispose of surplus municipal real property in a manner that promotes and encourages the development of affordable housing in the City while also complying with the constitutional prohibition on the gifting of property and public funds. In particular, the City desires to exercise the authority granted to it pursuant to RCW 39.33.015 as that statute currently exists or is hereafter amended. In addition, the City desires to consider the surplus of other real property that may benefit the public in other ways.

#### **8-13.020. – Review of City Real Property**

- A. On an annual basis, the Department of Planning and Community Development and the Public Works Department shall compile a list of all parcels of real property owned by the City and determine which, if any, parcels may appropriate for disposition as surplus real property. In compiling this list, the departments shall coordinate with other departments of the City to verify which City-owned parcels of real property are currently in use, or in the near future will be used, and also to identify City-owned parcels of real property that are not currently being used.
- B. In addition to the annual review prescribed above, the Mayor and City Department Heads may request that specific parcels of real property be evaluated for surplus disposition at any time. This review may also be initiated by the City Clerk upon the receipt of an unsolicited purchase offer.
- C. Any disposition of City real property requires City Council approval as required in this chapter.

#### **8-13.030. – Real Estate Review Committee; Report**

- A. Upon determining that no City department is using, or will use, an identified parcel of real property within a reasonable timeframe, the Real Estate Review Committee (RERC) shall prepare a written recommendation to the Mayor as to whether the parcel should be declared surplus and, if so, the method of disposition. The RERC shall meet on an as-needed basis, and shall include the following members or their designees:
  - 1. City Administrator or designee



2. Director of Planning and Community Development or designee
  3. Public Works Director or designee
  4. Chair of the Dayton Affordable Housing Commission or designee
  5. Chair of the Dayton Planning Commission or designee
- B. The RERC report shall include at least the following information regarding the subject property:
1. A description of the subject parcel's size, zoning, existing improvements, condition of improvements, ingress/egress, environmental condition (including known critical areas), and other applicable information.
  2. A description of the acquisition and development history of property, including when the property was originally acquired by the City, the source of funds for acquisition, the source of funds for subsequent improvements, how the property is currently used or was most recently used, and the City department(s) involved, etc.
  3. A written comment from the City's Director of Planning and Community Development as to whether the property is suitable for affordable housing development, including a description of the factors supporting the conclusions contained in the written comment. Such factors shall include, without limitation, location, approximate lot size, proximity to services, and access to transit.
  4. The report should identify the City department or fund which is most logically and/or economically linked to the property. In addition, the report should address the repayment of any bonds, grants, or other financing instruments used to acquire the property or which have used the property as security.
  5. Before a recommendation for surplus and disposition is made, the RERC shall announce to all City departments and the City Council that the subject property is being evaluated for surplus. If a City department expresses interest in using the property, that department must present a written explanation to the RERC, for inclusion in its recommendation report, of the interested department's interest, its intended use, timeline, and operational and financial rationale for maintaining City ownership of the property for use by the interested department.
  6. The RERC's report must describe the efforts made by the RERC to obtain input from and consultation with elected officials, City staff, City commissions, and other groups that may have developed ideas on re-purposing the subject property in alignment with City strategic goals.
  7. The RERC report must also include an estimate of the subject property's market value. This can be accomplished by use of a state certified appraisal,

tax assessment, market comparables, and/or City staff opinion of market value.

8. The RERC report should include any recommended covenants, conditions, or restrictions that the City should place on the subject property before disposed. Examples include access easements, purchase option or right of first refusal for the City to reacquire the property at a future date, among others.
9. The RERC report should recommend the preferred disposition method from among those listed in DMC 8-13.040. The methods are not mutually exclusive, and some properties may require a mixture of the methods.

#### **8-13.040. – Allowable Methods by Property Disposition**

- A. Public Hearing. The City Council shall hold a public hearing before declaring any City-owned real property as surplus and authorizing the disposition of same.
- B. Following a public hearing, surplus City-owned real property may be disposed by using any of the following methods:
  1. Direct Sale. Using City legal staff, third party title/escrow companies, and third-party reports such as appraisals and environmental studies, the City may sell the property directly to another party. This approach does not require the services of a professional listing broker or the additional considerations of a special disposition. Typical examples for which this method are most well-suited include:
    - a. Remnants, defined as: 1) small parcels of land, usually smaller than 2,000 square feet, 2) irregular shapes, and 3) are unlikely to support any stand-alone development. Remnants are often the leftover parcels from right of way dedications and developments. The most likely buyer of a remnant property will be an abutting property owner.
    - b. Unsolicited offers the City receives from public or private parties on city-owned real estate properties that have not been surplus or are not actively being marketed for sale.
    - c. Sales to non-profit or for-profit affordable housing providers, provided that such sales comply with Chapter 39.33 RCW.
  2. Listing with Real Estate Broker. In order to generate the greatest return on the sale of a property, subject to applicable procurement laws, the City may contract with a professional commercial real estate broker who specializes in commercial or residential properties for broker listing. Broker listings are ideally suited for land parcels and improved properties in established neighborhoods for which (1) the anticipated use of the subject properties will



be similar to their present uses, and (2) future development of the subject parcel is expected to conform to the well-established land uses prevalent in the subject property's vicinity.

3. Land Swaps. The City may also, as specifically authorized by Chapter 39.33 RCW, dispose of real property via a land swap with another public entity, such as a school district, county, the federal government, or other municipal corporation.
4. Special Dispositions. Some City-owned real property may merit the use of a special disposition method because they can provide benefits that far exceed the limitations of monetary market value. Special disposition of these properties can further the objectives and goals of the City and can actually be a catalyst for economic development, affordable housing, and expansion of community services. A special disposition process may include disposal of property for less than the appraised fair market or for other forms of consideration in addition to or in lieu of monetary payment to the city. All special dispositions should be reviewed for compliance with Chapter 39.33 RCW and Article VIII, Section 7 of the Washington State Constitution, which generally prohibits gifting of City property.
  - a. Key characteristics qualifying a property for special disposition status include the following:
    - i. Properties with characteristics desirable when providing affordable housing units including access to transit, employment, healthcare facilities, schools, and the presence of other relevant or appropriate factors. The property's current land use and zoning designations shall not be considered prohibitive to providing affordable housing units.
    - ii. Properties for which there is strong community interest, as expressed by local businesses, schools, and other community organizations.
    - iii. Properties which may, if the use is changed from the current use, create a substantial impact on neighboring property owners.
    - iv. The needs of multiple stakeholders may necessitate the use of a disposition method other than a listing or direct sale.
    - v. Special disposition methods may be appropriate where the City retains or requires property rights after the sale of the property, such as access easements, purchase options, and/or other conditions not already addressed elsewhere.

- vi. The RERC report may contain a recommendation for the use of a special disposition method for reasons other than those listed above, based on the specific circumstances.
- b. The primary means for performing a special disposition is a City-issued Request for Proposal (RFP). The RERC will develop the RFP criteria as part of any recommendation report which recommends disposition via a special disposition process. The criteria used in evaluating responses to the RFP will be enumerated and weighted on a property-specific basis.
  - i. Some RFP criteria may include:
    - A. Compliance with the Dayton Comprehensive plan
    - B. Potential number of affordable housing units which the property can provide, the income level(s) potentially served by affordable housing development, and the proposer's experience or capacity in developing and managing affordable housing
    - C. Job creation potential
    - D. New tax base expansion or creation potential
    - E. Experience and capability of the buyer
    - F. Timeline for completing the project and/or project phases, as applicable
- c. The RFP process may use a direct sale closing process or it may become part of the listing requirements with a licensed broker. Alternatively, the RERC may recommend a long-term lease. The RERC report shall contain a recommendation regarding the method of disposition.

#### **8-13.050. – Council Action on Disposition**

The City Council shall review the RERC report and the Mayor's recommendation and, following a public hearing, shall take one of the following actions:

- A. Accept the recommendations as presented, pass a resolution determining the subject property to be surplus pursuant to DMC 8-13.040, and authorizing the City to dispose of the property in the manner set forth in the recommendation; or,
- B. Modify the RERC report recommendations, declare the property surplus by resolution pursuant to DMC 8-13.040, and authorize the City to dispose of the property in the manner set forth in the modified RERC recommendation; or,



- C. Return the recommendations to the RERC for further analysis and consideration of specific facts identified by the City Council; or,
- D. Designate the subject property for long-term lease; or,
- E. Take no action on the recommendation.

### **8-13.060. – Surplus Property for Affordable Housing**

- A. The City desires to maximize the number of affordable housing units developed at or below 80 percent (80%) of Area Median Income (AMI).
- B. Pursuant to Chapter 39.33 RCW, the City of Dayton may dispose of surplus property, may transfer, lease, or use other methods of disposal of such property for the public benefit.
- C. Disposition of City surplus real property for affordable housing may be made to a public, private, or nongovernmental body on mutually agreeable terms and conditions, including a no-cost transfer, subject to and consistent with Washington Constitution article VIII, section 7, Chapter 39.33 RCW, and this chapter. In making this determination, the City shall consider appraisal costs, debt service, all closing costs, and any other liabilities to the City. The City may not transfer, lease or dispose of any real property pursuant to this section if such transfer, lease or disposal would violate any bond covenant or encumber or impair any contract.
- D. Affordable housing units created through the disposition of public property under this section may be guaranteed upon request by the City of Dayton by a notation made on a recorded deed or other property conveyance instrument which includes both a covenant or other requirement that the property shall be used for a designated public purpose and appropriate remedies that apply if the recipient of the property fails or ceases to use if for such purpose.
- E. Without exception, the surplus of property for affordable housing shall follows the procedures as outlined in 8-13.040(A)(4).

**Section 2: New Chapter.** Dayton Municipal Code Chapter 8-14 is hereby adopted to read as follows:

### **Chapter 8-14 – Vacation**

- A. When an application is received for the vacation of a City street/right-of-way, the procedures for street vacation set forth in Chapter 35.79 RCW shall be utilized. The City Council shall conduct the public hearing required under this statute.
- B. When an application is received for the vacation of the plat together with the City streets/right-of-way, the procedure for vacation set forth in RCW 58.17.212 shall be utilized. The hearing examiner pursuant to chapter DMC 10-01.030 shall conduct the public hearing required under this statute.

**Section 3: Severability.** If any section, sentence, clause, or phrase of this ordinance should be held to be invalid by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, or phrase of this ordinance.

**Section 4: Effective Date.** A summary thereof of this Ordinance consisting of its title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after the date of publication.

**PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF DAYTON, WASHINGTON, AT A REGULAR MEETING THIS 12 DAY OF DECEMBER 2020.**

City of Dayton

  
Zac Weatherford, Mayor

Attested/Authenticated by:

  
Trina Cole, City Administrator

Approved as to form:

  
Quinn Plant, City Attorney



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**ORDINANCE SUMMARY BY TITLE ONLY FOR PUBLICATION PURPOSES**

**ORDINANCE NUMBER 1972**

**AN ORDINANCE OF THE CITY OF DAYTON, WASHINGTON AMENDING**

The full text of Ordinance 1972, adopted the 16<sup>th</sup> day of December 2020, is available for examination at Dayton City Hall, 111 S. 1<sup>st</sup> St., Dayton, WA during normal business hours, 7:00 a.m. to 4:00 p.m., Monday – Friday.

Section 1: New Chapter – Disposition of Surplus Real Property

Section 2: New Chapter – Vacation

Section 3: Severability

Section 4: Effective Date

By: /s/ Zac Weatherford, Mayor

Attest: /s/ Trina Cole, City Administrator

Approved as to from: /s/ Quinn Plant, City Attorney

Published: \_\_\_\_\_

*The Waitsburg Times*