

**RESOLUTION NO: 12-02**

**A RESOLUTION FOR THE PURPOSE OF ADOPTING POLICIES FOR THE DISPOSITION OF CITY OWNED REAL PROPERTY**

WHEREAS, The City of Frederick currently owns numerous properties across the City which from time to time it may choose to lease or sell; and

WHEREAS, the sale or lease of City-owned properties should follow a clear criteria driven process intended to ensure that the City is a good steward of public resources, the process is transparent to the public, and implements City vision set forth in the City Comprehensive Plan; and

WHEREAS, the City of Frederick intends rescind the current policy, Resolution 02-24 and replace it with this updated resolution and attached Real Property Disposition Policy.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK that Resolution 02-24 is rescinded and no longer in effect; and

LET IT BE FURTHER RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FREDERICK that the attached Real Property Disposition Policy is hereby adopted to guide the disposition of City-owned real property.

ADOPTED AND APPROVED the 5<sup>th</sup> day of January, 2012.

Marsha A. Cowers  
WITNESS

Randy McClement  
Randy McClement, Mayor

Approved for Legal Sufficiency:  
Sandra A. Nichols  
Legal Department

## **THE CITY OF FREDERICK REAL PROPERTY DISPOSITION POLICY**

This policy is intended to guide the disposition of City-owned real property in a manner which emphasizes the good stewardship of public resources, is transparent to the public, and which implements the City's vision as set forth in its Comprehensive Plan.

The use of City-owned real property shall be primarily for public use as deemed appropriate by the Mayor and Board of Aldermen. If no current or future public use is identified for a City-owned real property, the Mayor may direct that such property be prepared for sale or lease. The Board of Aldermen will have final approval authority over all leasing and sale of City-owned real property except as provided for herein.

### **I. LEASE OF CITY-OWNED REAL PROPERTY**

- A.** The desire to lease public property may occur from time to time as a result of unique facilities or land which the City owns but has no plans to sell. Examples include:
  - 1. Facilities and/or land which have been gifted to the City for the purpose of providing a long-term home for a museum, non-profit, or other special use;
  - 2. Facilities constructed and/or financed by the City for a non-government use intended to stimulate the local economy or improve quality of life; and
  - 3. Facilities and/or land which may be needed for future municipal use but that in the short/mid-term may be leased to generate revenue and reduce the City's responsibilities for maintaining the property.
  
- B.** The City Facilities Manager shall maintain an up-to-date list of City properties which are leased to non-City entities. Such list will be posted on the City website and shall contain at a minimum the following information:
  - 1. Property Address;
  - 2. Brief Property Description;
  - 3. Name, Address, and Contact Information of Lessee;
  - 4. Use of Property by Lessee;
  - 5. Date of Lease Commencement and Termination; and
  - 6. The monthly lease payment and agreed upon adjustment(s).
  
- C.** City property shall be leased in accordance with the following process:
  - 1. Determination of Property Status. A property may only be considered for leasing upon a determination by the Mayor that there is no current public need

for the property. This determination will be made only after consultation with the appropriate City departments, which may include but are not limited to, the Departments of Public Works, Engineering, Finance, Legal and Planning. At least one week prior to advertisement of the property, the Mayor or his designee will provide written notice to the Board of Aldermen of his intent to advertise for the lease of the property.

2. Advertising. The subject property shall be advertised for lease for a minimum of 30 days in accordance with one of the following methods:
  - a. Issuance of a Request for Proposals (RFP) and / or bid and the placement of publicly visible “For Lease Signs” on the property with the appropriate contact information. The RFP and / or bid shall contain minimum leasing criteria.
  - b. Listing the subject space in one or more commercial real estate listings services and place publicly visible “For Lease Signs” on the property with the appropriate contact information. The listing shall provide the minimum leasing criteria.
2. Lease Criteria. The City, with input from the Board of Aldermen, shall establish the criteria upon which the lease proposals/offers will be evaluated. Leasing decisions will be made using a variety of criteria. In negotiating leases, the City should try to minimize costs to the public and achieve reasonable returns. However, it is recognized that returns may be measured in a number of ways, so in no case is the City required to award a lease based solely on lease rate. Lease criteria must include at a minimum the following:
  - a. Lease Rate. Relationship to market lease rates in comparable properties including a cash flow analysis over the life of the lease. The lease rate shall consider the debt service on an outstanding debt or bond obligations connected to the subject space, including the amount of public investment and the number of years remaining on the note. If the property was acquired with tax-exempt financing, the City will submit the proposal to bond counsel for review.
  - b. Lease Term. Initial term and any options for renewal.
  - c. Tenant Improvements. Type of improvements, responsibility, cost, value, depreciation, and life of improvements.
  - d. Maintenance. Type of maintenance and responsibility.
  - e. Utilities. Type of utilities and responsibility.
  - f. Other Unique Considerations.
    - i. Use by another governmental entity;
    - ii. Use by a non-profit whose mission fulfills a public need;
    - iii. Property covenants (e.g., gifted properties);

- iv. Specialized or specific use facilities (e.g., a baseball stadium);
  - v. Financial stability of tenant. The tenant will supply a letter of credit (LOC) to the Facilities Manager that will be updated annually. The City will draw upon the letter of credit if the tenant fails to pay their obligations as required under the terms of the lease agreement. The LOC will be maintained until the end of the lease agreement or when final payment is due to the City.
  - vi. Leasing history when considering lease extensions; and
  - vii. Lease of very short duration.
- g. Implementation of City Vision.
- i. Use is consistent with City Comprehensive Plan;
  - ii. Use is permitted in the zoning district;
  - iii. Use is intended to stimulate neighborhood revitalization;
  - iv. Use is intended as an economic development catalyst to increase property values, create jobs, and generate tax revenue; and
  - v. Use is intended to improve quality of life in the City.
3. Broker Services. The City may choose to use a commercial broker and/or an industry expert to assist with the lease preparation, marketing, and negotiation. Such services, if used, will be retained in accordance with the City's Purchasing Policies and Procedures.
4. Selection Team. The City Facilities Manager, in consultation with the Mayor's Office, shall assemble a multi-discipline Selection Team. The selection team shall include at minimum representatives from Finance, Economic Development, Planning, Engineering, DPW Operations, and Legal, and may also include other disciplines as necessary. An Aldermanic liaison may be selected by the Mayor to serve on occasion. The Selection Team will review, evaluate, and score each proposal/offer, and then make a recommendation to the Mayor.
5. Recommendation. After consideration of the Selection Team's recommendation, the Mayor may direct staff to prepare a draft lease.
6. Approval. All leases shall be approved by the Board of Aldermen, except that a lease with a term of six (6) months or less and with no automatic renewal may be approved by the Mayor.

## II. SALE OF CITY-OWNED REAL PROPERTY

- A. The desire to sell City-owned real property may occur from time to time as a result of excess property and to implement the City's vision. Some examples include:
1. Excess land and/or facilities from a City capital project;
  2. Land and/or facilities acquired for the express purpose of furthering revitalization and economic development; and
  3. A facility and/or land which is no longer needed by the City for a public use.
- B. City property shall be sold in accordance with the following process:
1. **Determination of Property Status.** A property may only be considered for sale upon a determination by the Mayor and Board of Aldermen that there is no current or future municipal need for the property. This determination will be made only after consultation with the appropriate City departments, which may include but are not limited to, the Departments of Public Works, Engineering, Finance, Legal and Planning.
  2. **Preparation for Sale.** The City Facilities Manager shall be responsible for the following prior to advertising a property for sale:
    - a. Obtain a current property appraisal (< 1 year old);
    - b. Obtain a property plat and boundary survey;
    - c. Verify title/deed to the property;
    - d. Coordinate with City Engineering and Legal Departments to identify any property covenants, liens, deed restrictions, easements, or other restriction(s) (i.e. Project Open Space, Utility Easements);
    - e. Coordinate with the City Engineering and Public Works Departments to determine any potential future Right of Way requirements and;
    - f. Determine the amount of debt on the subject property being serviced by the City. The City shall consider the debt service on an outstanding debt or bond obligations connected to the subject space, including the amount of public investment and the number of years remaining on the note. If the property was acquired with tax-exempt financing, the City will submit the proposal to bond counsel for review
  3. **Advertising.** The subject property shall be advertised for sale for a minimum of 60 days in accordance with one of the following methods:
    - a. Issuance of a Request for Proposals (RFP) and / or bid the placement of publicly visible "For Sale Signs" on the property with the appropriate contact information. The RFP and / or bid shall contain minimum sale criteria.

- b. Listing the subject space in one or more commercial real estate listings services and place publicly visible “For Sale Signs” on the property with the appropriate contact information. The listing shall provide the minimum sale criteria.
4. Sale Criteria. The City, with input from the Board of Aldermen, shall establish the criteria upon which the sale proposals/offers will be evaluated. Sale decisions will be made using a number of criteria. In negotiating sales, the City should try to minimize costs to the public and achieve reasonable returns. However, it is recognized that returns may be measured in a number of ways, so in no case is the City required to award a sale based solely on price. Sale criteria may include but are not limited to the following:
- a. Sale Price. Relationship to the appraised value and market sales rates for comparable properties (overall value and by square footage).
  - b. Down Payment/Option Payment. Amount of down payment and/or Option Payment to be applied to sales price at closing.
  - c. Future Use and Value. Analysis of proposed future use to determine property tax generation, job creation, and other tangible revenue values.
  - d. Outstanding Debt. Analysis of the amount of outstanding debt or bond obligations related to the subject property, including the amount of public investment and the number of years remaining on note shall be taken into consideration.
  - e. Closing, Performance Criteria, and Claw Back Provisions. Evaluation of the timing of due diligence period, closing, entitlement period, development completion, and other key performance criteria if any. In some cases of non-performance by the buyer, the City may want to retain the right to take the property back.
  - f. Other Unique Considerations.
    - i. Use by another Governmental entity; and
    - ii. Use by a non-profit whose mission fulfills a public need.
    - iii. Financial stability of purchaser. The purchaser will supply a letter of credit (LOC) to the Facilities Manager that will be updated annually or until the transaction has been completed.
  - g. Implementation of City Vision.
    - i. Use is consistent with City Comprehensive Plan;
    - ii. Use is permitted in the zoning district
    - iii. Use is intended to stimulate neighborhood revitalization;

- iv. Use is intended as an economic development catalyst to increase property values, create jobs, and generate tax revenue; and
  - v. Use is intended to improve quality of life in the City.
5. **Broker Services.** The City may choose to use a commercial broker and/or an industry expert to assist with the sale preparation, marketing, and negotiation. Such services, if used, will be retained in accordance with the City's Purchasing Policies and Procedures.
  6. **Selection Team.** The City Facilities Manager, in consultation with the Mayor's Office, shall assemble a multi-discipline Selection Team. The selection team shall include, at a minimum, representatives from Finance, Economic Development, Planning, Engineering, Finance, Legal and DPW Operations, and may also include other disciplines as necessary. An Aldermanic liaison may be selected by the Mayor to serve on occasion. The Selection Team will review, evaluate, and score each proposal/offer, and then make a recommendation to the Mayor.
  7. **Recommendation.** After consideration of the Selection Team's recommendation, the Mayor may direct staff to prepare a draft sales agreement.
  8. **Approval.** All property sales shall be approved by the Board of Aldermen.