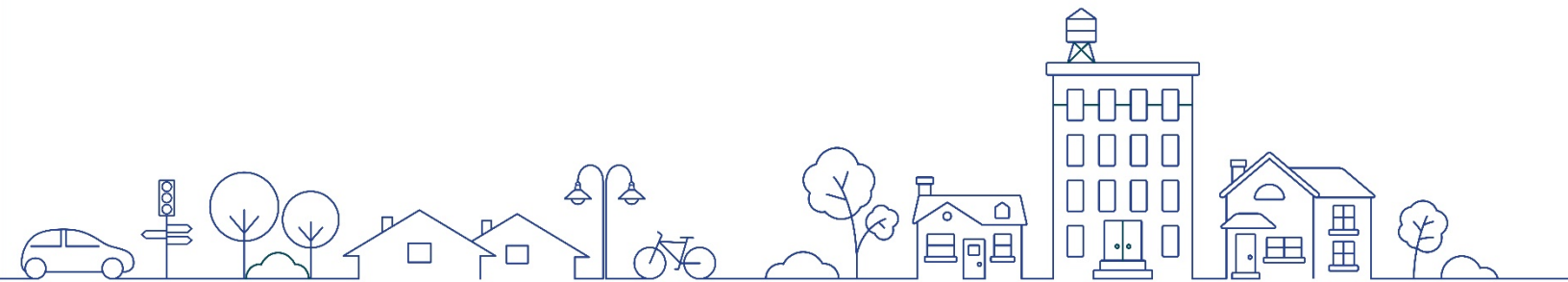


Oregon Municipal Handbook

CHAPTER 22: DISPOSING OF PROPERTY



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Chapter 22: Disposal of Property

Introduction

As part of operations, cities utilize property to conduct city business. The term “property” can encompass many different things: land, equipment and patents are all forms of property. Land and developments made to land are categorized as “real property.” City parks, the public rights of way, and the city hall building are all examples of real property. On the other hand, equipment, vehicles, clothing and cash are generally categorized as “personal property.” Office supplies, fire trucks, police cruisers and laptop computers are all examples of personal property.

Copyrights, trademarks, patents and trade secrets are “intellectual property.” Also, remember that property “owned” by the city is owned by the public and is used for the public good. Similar to their need to acquire new property, cities may also have the need to dispose of property. This chapter will cover the steps necessary to dispose of real property cities no longer wish to keep.¹

Resource:

LOC’s [FAQ on *Disposing of Surplus Property*](#) available in the LOC’s online [Reference Library](#).

Disclaimer: These materials are not intended to substitute for obtaining legal advice from a competent attorney. Rather, these materials are intended to provide general information regarding the disposal of property for public officials to allow the public official to have a working knowledge of the topic.

I. Disposal of Surplus Personal Property

The disposal of surplus personal property is a public contract to which the policy of preserving competitive bidding as the standard contracting method applies.² The disposal of surplus personal property may be exempt from the competitive bidding requirements of the Oregon Public Contracting Code if the local contracting agency adopts its own rules.³ Typically, local codes will designate the person or persons authorized to declare property “surplus,” if that authority is not retained by the local contract review board. The local code will then provide for various methods of disposal. The most common is a publicly advertised auction to the highest bidder but may also include a liquidation sale, fixed price sale, trade-in, donation or as a last resort, disposal as waste. Further discussion of disposal of personal property is provided for in [Chapter 13 – Purchasing and Public Contracts](#) and in LOC’s *FAQ on Disposing of Surplus Property*.

¹ This chapter will focus on the disposal of city real property. The disposal of personal property is discussed in Chapter 13 – *Purchasing and Public Contracts*. Intellectual property is not addressed and cities wishing to learn more about intellectual property should work with their city attorneys.

² Real versus personal versus intellectual property. Real property is considered land, and anything growing on, attached to, or erected on land such as soil and buildings. Personal property is considered any movable or intangible thing that is subject to ownership and not classified as real property such as a firetruck or other equipment. Copyrights, trademarks, patents and trade secrets are intellectual property.

³ ORS 279A.185.

II. Sale of Real Property

Real property must be maintained and managed utilizing city resources, and a city may decide that the real property may no longer serve a public purpose that benefits the city. When a city council considers it necessary or convenient to sell real property, the council shall post a notice of the proposed sale in a newspaper of general circulation in the city and shall hold a public hearing concerning the sale.⁴ Notice of the public hearing must be published at least once during the week prior to the hearing and shall state:

- The time and place of the hearing;
- A description of the property or interest to be sold;
- The proposed uses for the property; and
- the reasons why the city council considers it necessary or convenient to sell the property.⁵

The nature of the proposed sale and the general terms, including an appraisal or other evidence of the market value of the property shall be fully disclosed by the city council at the public hearing.⁶ In addition, any resident of the city shall be given the opportunity to present written or oral testimony at the hearing.⁷

III. Transfer, Lease, Donation of Real Property

Cities are granted the vested power to transfer, lease, donate or use their public lands pursuant to ORS 271.300 to 271.360.⁸ Each city council may provide rules necessary for carrying out the power provided by those statutes.⁹ Once a city determines that its real property is no longer needed for public use or when the public interest may be furthered, the city may exchange, or convey any or all of the city's interest in that real property to another governmental body, private individual or corporation.¹⁰ The city may also lease real property so long as the lease is for a time period of 99 years or less.¹¹ In exchange for the land, a city may accept cash, real property, or both.¹² If the city council does not determine that the public interest may not be furthered by the exchange, conveyance or lease of the real property, the property may not be disposed of under the provisions of ORS 271.300 to 271.360 except that it may be exchanged for property that is equal to or superior to the useful value for public use.¹³

Disposal of Real Property

The disposal of city-owned real property is governed by two state statutes:

ORS 221.725
Sale of city real property; publication of notice; public hearing and

ORS 221.727
Alternative procedure for sale of city real property; public notice and hearing

⁴ ORS 221.725.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ ORS 271.300(1).

⁹ ORS 271.300(2).

¹⁰ ORS 271.310(1).

¹¹ *Id.*

¹² *Id.*

¹³ ORS 271.310(4).

IV. Relinquishing Title of Real Property Not Needed for Public Use

In addition to the ability to sell, transfer, exchange, convey, or lease real property, a city may also relinquish the title for any property no longer needed for public use provided that: 1) the property is relinquished to a governmental body in Oregon, and 2) after relinquishment, the property must be used for at least 20 years for a public purpose by the governmental body in which the property was relinquished to.¹⁴ A piece of property may also be relinquished to a qualifying nonprofit or municipal corporation for the purpose of providing the following services:

- Low income housing;
- Social services; or
- Child-care services.

Cities may convey real property to a nonprofit or municipal corporation to be used by that entity for the creation of open space, parks or natural areas for perpetual public use so long as the conveyance document includes a restriction on the use of the property that limits the uses to those uses previously listed.¹⁵ The conveyance document must also contain a provision for the revision of the property to the city if the property is not used in conformance with the restriction.¹⁶ City owned real property may also be conveyed to a nonprofit, public or private corporation for the purpose of providing broadband service so long as the conveyance document provides for that limitation and reversion back to the city in the event of nonconformance.¹⁷ The city may via resolution, waive and relinquish any reversionary interest held by the city in property transferred under the restrictions provided above so long as the transfer occurred at least 20 years prior, or if the city determines that waiving and relinquishing the reversionary interest is in the public interest.¹⁸

V. Other Considerations

If a piece of real property is located within 100 feet of a railroad right of way or within 500 feet of an at-grade rail crossing, the city must first notify the Oregon Department of Transportation at least 30 days prior to listing the property for sale, exchange or conveyance.¹⁹ This notification requirement does not apply if the sale, exchange or conveyance is to a provider of rail service, the sale, exchange or conveyance is relating to an easement, or if the property is a light rail corridor excluded by the department.²⁰

¹⁴ ORS 271.330(1).

¹⁵ ORS 271.330(3).

¹⁶ *Id.*

¹⁷ ORS 271.330(4).

¹⁸ ORS 271.335.

¹⁹ ORS 271.310(3)(a).

²⁰ ORS 271.310(3)(b).

VI. Conclusion

Whether by sale, transfer, lease or other methods, cities can and do utilize the various disposal methods to properly manage its real property.