

## Chapter 37

### REAL PROPERTY TRANSACTIONS INVOLVING THE CITY AND COUNTY OF HONOLULU

#### Articles:

1. **Disposal of Real Property Owned by the City and County of Honolulu**

#### ARTICLE 1. DISPOSAL OF REAL PROPERTY OWNED BY THE CITY AND COUNTY OF HONOLULU

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#### Sec. 37-1.1 **Definitions.**

For purposes of this article, the following words and phrases shall have the following meanings:

"Agency" means any office, department, board, commission or other governmental unit of the city, other than the board of water supply.

"Director" means the director of budget and fiscal services of the city.

"Dispose of real property" means to transfer or alienate real property by sale, gift, exchange or other voluntary action, but shall not include the lease or rental of real property or the destruction or demolition of an improvement to real property. The phrase shall include the cancellation of any easement for access to the ocean.

"Real property" includes a fee simple interest, a life estate, or a remainder or executory interest in land or any improvements thereon, whether legal or equitable, and any easement for access to the ocean, but does not include any license or any easement other than an easement for access to the ocean. (Added by Ord. 92-108; Am. Ord. 04-11)

#### Sec. 37-1.2 **Transfers of use of city real property--Surplus real property--Disposal.**

- (a) Any agency of the city having under its jurisdiction and control real property which is no longer desired or needed by the agency for its own use shall submit a list of such real property to the director which shall include a description of the property and an estimate as to the fair market value.
- (b) The director shall prepare an inventory of all real property found on any list submitted pursuant to subsection (a), including the descriptions of the properties and estimated fair market values, and shall circulate copies of the inventory to such agencies of the city as the director shall determine, and any agency receiving copies of the inventory shall, within 30 days of the receipt thereof, file with the director a statement as to whether or not any of the real property included in the inventory is needed by the agency for its use.
- (c) If an agency submits a statement to the director indicating a need for the use of any real property included in the inventory, the statement shall also contain a request for the use of such real property. The director may then recommend to the mayor the transfer of the use of the real property to the agency indicating a need to use the real property. Prior to making a transfer, the director shall provide written notification of the proposed transfer to the neighborhood board of the district in which the subject property is situated and to any abutting property owners at least 10 days prior to such transfer; provided, however, written notification shall not be required for the transfer of real property with an estimated fair market value under \$5,000.00. This subsection shall not preclude the mayor from making lawful transfers of the use of city property between agencies by means other than those provided in this section.
- (d) Any real property included in the inventory which is not recommended by the director to the mayor for transfer, or which is recommended by the director to the mayor for transfer but is not transferred within a reasonable time, as determined by the director, shall be deemed surplus real property.

- (e) The director, with the concurrence of the corporation counsel, shall determine whether to recommend to the council the disposal of surplus real property.
- (f) Before any surplus real property owned by the city may be disposed of, the director shall submit a recommendation and a draft resolution with respect to the proposed disposal of the surplus real property to the council. The draft resolution shall include a description of the real property, an estimate as to the fair market value of the real property, and a statement whether the real property will be disposed of by gift, exchange, sale, or other means. If the real property is proposed to be exchanged, the draft resolution shall state the property for which the real property is proposed to be exchanged. If the real property is proposed to be sold, the draft resolution shall state whether the property is proposed to be sold at auction, by negotiated sale, or otherwise, and shall state the minimum price for which the property will be sold.
- (g) If the council finds that the proposed disposal of surplus city real property is in the interest of the inhabitants of the city and adopts a resolution authorizing the director to dispose of the surplus real property, the surplus real property may be disposed of in accordance with the terms of the resolution and in accordance with Section 37-1.6, Section 37-1.7, or Section 37-1.8, whichever is appropriate. Otherwise, the surplus real property may not be disposed of.

(Added by Ord. 92-108)

**Sec. 37-1.3 Disposal of real property other than surplus real property.**

- (a) The city may not dispose of real property that is not surplus real property, as determined in Section 37-1.2, except pursuant to this section.
- (b) If the director or the mayor, with the concurrence of the corporation counsel, finds it to be in the interest of the inhabitants of the city to dispose of city real property that is not surplus real property, as determined in Section 37-1.2, the director or the mayor may propose to the council that real property be disposed of pursuant to this section.  
Any such proposal shall state the public interest being served by the proposal and shall state that the real property is not surplus real property.
- (c) The council, either pursuant to a proposal made under subsection (b), or on its own proposal, may, if it finds it to be in the interest of the inhabitants of the city, adopt a resolution authorizing the director to dispose of city real property.
- (d) After the council's adoption of a resolution pursuant to subsection (c), the director may dispose of the real property that is the subject of the resolution in accordance with the terms of the resolution and with Section 37-1.6, Section 37-1.7, or Section 37-1.8, whichever is appropriate.

(Added by Ord. 92-108)

**Sec. 37-1.4 Special procedures and provisions.**

- (a) Any real property held by the city for school purposes may not be disposed of without the consent of the superintendent of education.
- (b) No city real property bordering the ocean shall be sold or otherwise disposed of.
- (c) All proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.
- (d) The disposal of an abandoned county highway shall be subject to HRS Section 264-3.
- (e) The transfer of a county highway to the state shall be subject to HRS Section 264-2.
- (f) Real property acquired by the city by foreclosure of a real property tax lien shall be disposed of pursuant to Chapter 8 of this code.
- (g) Real property acquired by the city by default in the payment of any special assessment shall be disposed of pursuant to Section 14-26.9 of this code.
- (h) Real property acquired by the city under its power of eminent domain pursuant to HRS Section 46-61 and Chapter 101 in excess of that needed for a public purpose, shall be disposed of pursuant to HRS Sections 46-61 and 101-2, to the extent that these sections apply to such excess real property.
- (i) Any category of real property owned by the city, the disposal of which is governed by state law, shall be disposed of in accordance with such state law and, to the extent not inconsistent herewith, in accordance with this article.

(Added by Ord. 92-108)

**Sec. 37-1.5 Exemptions.**

The following shall be exempt from this article:

- (a) Disposal of real property of the board of water supply.
- (b) Disposal of any real property acquired by the city specifically for the purpose of disposing of the property, provided that the ordinance or resolution authorizing the acquisition specifically provides for the disposal of the city real property by means other than those specified in this article.

- (c) Disposal of real property constituting a housing unit or unimproved housing lot acquired or developed by the city when the unit or lot is disposed individually.

A unit or lot is disposed "individually" when disposed:

- (1) After a solicitation of bids or offers for that unit or lot by itself; and
- (2) In a transaction separate from the transaction disposing any other city real property.

When units or lots in a housing project are placed for sale to the public or class of the public, the solicitation of offers for a unit or lot in the project shall be deemed a solicitation for "that unit or lot by itself" which complies with subdivision (1).

For the purpose of this subsection, "housing unit" means a detached dwelling or duplex unit, including the zoning lot on which situated and other appertaining real property interests. "Housing unit" also means a dwelling unit in a multifamily dwelling and the appurtenant real property interests to the unit. "Unimproved housing lot" means a zoning lot, with no or only infrastructure improvements, on which a detached dwelling or duplex unit must be constructed by the acquirer. "Detached dwelling," "duplex unit," "dwelling unit," "multifamily dwelling," and "zoning lot" mean the same as defined under Chapter 21.

(Added by Ord. 92-108; Am. Ord. 98-48)

**Sec. 37-1.6 General provisions for disposal by sale.**

- (a) Real property owned by the city which is to be disposed of by sale shall be sold subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:
- (1) The resolution authorizing the sale of the property shall state whether the property is proposed to be sold at auction, by negotiated sale, or otherwise, and shall state the minimum price for which the property will be sold;
  - (2) The property shall be disposed of by public auction unless otherwise provided in the resolution authorizing the sale;
  - (3) If the council determines by resolution that city real property may be disposed of by auction, the director shall, before selling the city real property by auction, give notice of the proposed sale at least once a week for two weeks in a newspaper of general circulation in the city;
  - (4) The property shall not be disposed of for a sales price less than any minimum, or upset price, stated in the resolution authorizing the sale.
- (b) If the city real property to be sold, whether surplus or nonsurplus, has an assessed value greater than \$1 million, the resolution authorizing the sale of the property shall, in addition to complying with subsection (a), contain the following information:
- (1) The intended use of the property by the buyer; and
  - (2) The information required in Section 37-1.11(a)(1), (a)(2) and (a)(4).

(Added by Ord. 92-108; Am. Ord. 04-11)

**Sec. 37-1.7 General provisions for disposal of city real property by exchange.**

Real property owned by the city which is to be disposed of by exchange shall be exchanged subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:

- (a) A description of the property being exchanged and the property for which it is being exchanged, and the name of the owner or owners of the property for which city real property is being exchanged shall be set forth in the resolution authorizing the exchange.
- (b) The city may accept property of less than equivalent value for city real property only when the difference is made up by a cash payment or when permitted as a gift pursuant to Section 37-1.8.

(Added by Ord. 92-108)

**Sec. 37-1.8 General provisions for disposal of city real property by gift.**

- (a) Real property owned by the city which is to be disposed of by gift shall be disposed of subject to the following provisions, except to the extent that they are inconsistent with Section 37-1.4:
- (1) A description of the city real property being disposed of by gift, an estimate of the value thereof, and the name of the donee thereof shall be set forth in the resolution authorizing the disposal by gift.
  - (2) The council shall make a determination and declare in the disposal resolution that the disposal by gift shall serve a public purpose.
  - (3) The council may impose any conditions or restrictions upon the disposal by gift, including but not limited to, restrictions upon the use of the real property for a period of time or in perpetuity and may provide for the reversion of the property to the city in the event that such conditions or restrictions as are imposed are not adhered to.
- (b) Any negotiated sale or any exchange of city real property for less than the fair market value of the city real property shall be treated as a gift of city real property to the extent that fair market value of the city real

property exceeds the sales price of the city real property (in the case of a negotiated sale) or the fair market value of the property for which the city real property is exchanged (in the case of an exchange). Any such gift shall comply with this section and may be made subject to conditions or restrictions as provided in subsection (a)(3) above.

(Added by Ord. 92-108)

**Sec. 37-1.9 Preparation of documents--Appraisals.**

The director is authorized to prepare, subject to the approval of the corporation counsel, such deeds and other documents as are necessary to effect the disposal of city real property as authorized by council resolution. When requested by the council, the director or the director of the department of design and construction shall prepare an appraisal of the fair market value of city property or of property proposed to be exchanged for city real property. The council shall make the final determination as to the sales price of city real property and of the exchange value of property to be exchanged for city real property. (Added by Ord. 92-108; Am. Ord. 04-11)

**Sec. 37-1.10 Disposal of interests in property not subject to this article.**

Nothing in this article shall be construed to prohibit the director or any officer or agency of the city from utilizing the procedures set forth in this article for the disposal of interests in property that are not subject to this article, including, but not limited to easements other than easements for access to the ocean. (Added by Ord. 92-108)

**Sec. 37-1.11 Proposed sale of high value property.**

- (a) The director shall submit a draft resolution to the council containing the following information before city surplus or nonsurplus real property, with an assessed value of more than \$1 million, is marketed:
- (1) A description of the property, including its size, location, existing zoning, and any city facilities or improvements on the property;
  - (2) The assessed value of the property;
  - (3) A marketing plan or approach that describes how the property will be marketed, including the manner of advertising the property's availability, the extent of any planned local, national or international advertising or other marketing efforts and a copy of any proposed brokerage agreement with a real property brokerage firm for the sale of the property;
  - (4) Any conditions or restrictions which the director proposes to be applicable to the property upon its sale, including permitted uses of the property; height restrictions; preservation of view planes; landscaping; preservation of existing structures; maintenance of existing public facilities, including parking; retention of existing rental housing units, elderly or special needs housing units, moderate-income housing units, low-income housing units, very low-income housing units, or extremely low-income housing units, if applicable; and any other proposed conditions or restrictions.
- (b) The council may adopt the resolution in the form transmitted by the director, or with additional conditions or restrictions. Upon the adoption of the resolution, the director may proceed with the marketing of the property. No resolution for the sale of city property, as described in Section 37-1.6, shall be considered by the council unless the resolution described in this section has first been approved.

(Added by Ord. 04-11)