



<b>DEPARTMENT:</b>	Reading No.	2
<b>CITY ATTORNEY'S OFFICE</b>	Public Hearing	Yes
	Disclosure Required	No
	<b>Item No.</b>	<b>9</b>

SUBJECT  
Modification to City Code to establish procedure for disposition of real property

BACKGROUND/CONSIDERATION

The City Attorney's Office proposes modifications to City Code to establish a procedure for the sale or lease of real property. This procedure allows the City the flexibility to authorize the disposition of real property based on any and all factors deemed appropriate to the particular transaction.

FISCAL IMPACT (IF APPLICABLE)


None

REQUESTED ACTION

Recommend approval of Ordinance No. 2015-28.

**MEMORANDUM**

TO: Mayor and City Council

FROM: Alison L. Dawley, City Attorney 

SUBJECT: Code Modification - Disposition of Real Property

DATE: June 5, 2015

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In order to allow City Council flexibility in evaluating real property dispositions on a case by case basis, the City Attorney's Office proposes modifications to City Code as set forth in the attached ordinance. Generally, the proposed ordinance exercises the City's home rule authority in disposing of real property.

The proposed ordinance authorizes City Council to sell or lease real property pursuant to the terms and conditions that the City Council deems to be in the City's best interests. As drafted, the modifications allow the City Council the flexibility to authorize the sale or lease of real property based on an appraisal or any other factors that City Council deems appropriate. All dispositions of real property subject to Council approval under this section of City Code (whether by sale or by lease) will require approval by resolution.

Certain conveyances of property are not subject to the proposed regulations either because they are regulated by other code provisions or because they do not convey fee simple title in real property. Specifically,

- Designated "Park property" and "waterfront property" (see §42-3, City Code)
- Federally-funded Community Development Block Grant conveyances
- Vacation of right-of-way (see Ch. 52, City Code)
- Lease of real property subject to the jurisdiction of the City of Melbourne Airport Authority (see § 12-142, City Code)
- Easements
- Licenses to use land
- Sale or lease of personal property

**RECOMMENDATION:** Approve the attached ordinance, which ordinance authorizes the sale or lease of real property pursuant to the terms and conditions that the City Council deems to be in the City's best interests.

cc: Mike McNees, City Manager

ORDINANCE NO. 2015-28

AN ORDINANCE OF THE CITY OF MELBOURNE, BREVARD COUNTY, FLORIDA, RELATING TO DISPOSITION OF CITY OWNED REAL PROPERTY; MAKING FINDINGS; AMENDING CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION," BY PROVIDING FOR THE REPEAL OF SECTIONS 2-645 THROUGH 2-660; CREATING A NEW SECTION 2-645, CONVEYANCE OF TITLE TO REAL PROPERTY; CREATING A NEW SECTION 2-646, LEASE OF REAL PROPERTY; CREATING A NEW SECTION 2-647, EXEMPTIONS; PROVIDING FOR SEVERABILITY AND INTERPRETATION; PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN ADOPTION SCHEDULE.

WHEREAS, the process set forth in Chapter 2 of the City Code for the sale, lease, conveyance or other disposition of real property was established in 2007; and

WHEREAS, after following the process established in Code for several years, City staff has determined that the procedures need to be clarified, revised, and streamlined; and

WHEREAS, approval of this ordinance is authorized pursuant to the powers in the City's Charter and home rule powers set forth in Article VIII, Section 2, Florida Constitution of 1968 and Section 166.021, Florida Statutes.

BE IT ENACTED BY THE CITY OF MELBOURNE, FLORIDA:

SECTION 1. That Sections 2-645 through 2-660, of the City Code of Melbourne, Florida are hereby repealed.

~~Sec. 2-645. Applicability.~~

~~(a) This division shall apply to the sale of property owned by the city in fee simple, unless otherwise provided for in this division.~~

~~(b) This division shall not apply to the following conveyances of title to city property:~~

~~(1) The conveyance of city property pursuant to an agreement approved by the city council for the use of Federal Community Development Block Grant Funds to provide housing in the city.~~

~~(2) The conveyance of city property authorized by the city council in the form of a resolution authorizing the conveyance of an easement or right-of-way to another governmental unit or regulated public utility.~~

- ~~(3) The vacation of any platted right-of-way or easement or other platted interest in real property.~~
- ~~(4) The lease of city property subject to the jurisdiction of the city airport authority pursuant to chapter 12, article V, and the sale of city property subject to the jurisdiction of the city airport authority. The sale of city property subject to the jurisdiction of the city airport authority and titled in the name of the "City of Melbourne" shall be subject to section 2-660.~~
- ~~(5) The sale of city property, lease of city property, or other disposition of any other interest in real property authorized by the city council on or prior to October 9, 2007.~~

~~Sec. 2-646. Definitions.~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*City property* includes, but is not limited to, any land, water or air rights.~~

~~*Lease of city property* means any right to lease city property, by way of agreement, irrespective of consideration being paid to the city, and irrespective of the city utilizing or being allowed to utilize the property for any purpose during the term of the lease. For purposes of this division, the term "lease" shall not include special event permits, revocable permits, concession agreements, management agreements, use or licensing agreements, interests in property less than fee simple, or leases for a term of not more than three years, including option periods.~~

~~*Sale of city property* means and refers to any conveyance, transfer, gift, exchange or other transaction in which legal title to land passes in fee simple from the city to any person or entity, whether or not the city retains any partial title, interest, reservation, easement, right-of-way, restriction or license in regard to the property. The term "sale of city property" shall include any sale of development rights as defined in this Code. The term "sale of city property" shall not include a vacation or abandonment of a city public right-of-way, including streets or alleys, or the encroachment thereupon, or the conveyance of less than fee simple title.~~

~~Sec. 2-647. Analysis of potential sale.~~

~~In order for the city council and the public to be fully apprised of all conditions relating to the proposed sale of city property, the city manager shall provide a report that defines the history and circumstance of the property, an analysis of the proposed sale, and an evaluation of criteria.~~

- ~~(1) *Definition of the property.* The following requirements shall be included in the report:
  - ~~a. A legal description of the property.~~
  - ~~b. The address of the property.~~~~

- ~~e. A description of any improvements on the property.~~
- ~~d. How the property has been used since it was acquired and its current use.~~
- ~~e. How or why the property was acquired.~~
- ~~f. When the property was acquired and how it was financed.~~
- ~~g. The estimated value of the property.~~
- ~~h. Any relevant property history.~~
- ~~i. Whether disposal of the property is precluded by grant provision or deed restrictions.~~

~~(2) Analysis of a proposed sale of city property.~~

- ~~a. The following criteria shall be addressed in the analysis:
  - ~~1. The basis of the sale.~~
  - ~~2. Findings of fact and conclusions of law in support of the action.~~
  - ~~3. The original intent for use of the parcel at time of acquisition.~~
  - ~~4. Whether the conditions and circumstances of the use of the parcel have undergone change with respect to intended city use of the parcel.~~
  - ~~5. Whether and how the public would benefit from the proposed disposal.~~
  - ~~6. Whether the proposed arrangements associated with the disposal are equitable.~~~~
- ~~b. When the intended use of the property is known, the following criteria shall be addressed in the analysis:
  - ~~1. Whether disposal of the parcel for other use could adversely affect the neighborhood scheme.~~
  - ~~2. Whether the intended use is in accordance with city goals and objectives and conforms to the comprehensive plan.~~
  - ~~3. Whether there could be potential impacts on adjacent property including impacts of increased traffic.~~
  - ~~4. Whether the intended use is in accordance with the surrounding neighborhood, if it will block views, or if it will create environmental intrusions.~~~~

5. ~~The economic impact to the city, including a determination as to whether the proposed use is in keeping with a public purpose and community needs such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, or improving the city's overall quality of life.~~

~~Sec. 2-648. Fair market value required—Generally.~~

~~(a) Any sale of city property must be appraised by two independent appraisers, who are designated members of the Appraisal Institute, if the property is estimated by city staff to have a value that exceeds \$1,000,000.00.~~

~~(b) Any sale of city property must be appraised by one independent appraiser, who is a designated member of the Appraisal Institute, if the property is estimated by city staff to have a value between \$200,000.00 and \$1,000,000.00.~~

~~(c) Any sale of city property with an estimated value below \$200,000.00 shall not require an appraisal.~~

~~Sec. 2-649. Same—Exceptions.~~

~~Unless otherwise exempted by two-thirds votes of city council members present and voting, all sales of city property or lease of city property for non-governmental or non-institutional purposes shall be done at fair market value. This section shall not apply to:~~

- ~~(1) Any sale of city property or lease of city property to a not-for-profit organization, which is determined by the city council to be providing a service that is related to the health, protection and welfare of the community.~~
- ~~(2) The sale of city property or lease of city property, the disposition of which is governed by applicable provisions of state or federal law.~~
- ~~(3) The sale of city property for the purpose of a convention center or other purpose determined by the city council, based on a written study of economic impact, to be of significant economic benefit to the community and which sale, lease or conveyance is approved after a public hearing.~~
- ~~(4) The sale of city property or lease of city property which results in payment to the city in an amount in excess of fair market value.~~

~~Sec. 2-650. Deposit required.~~

~~No ordinance authorizing the sale of city property shall be introduced until the proposed purchaser has deposited in the office of the director of finance a sum of money equal to ten percent of the purchase price, which shall be in cash or cashier's check. No deposit shall be required when the proposed sale of property declared to be surplus property has been initiated by the city council.~~

~~Sec. 2-651. Methods of disposal.~~

~~The city may engage in the sale of city property utilizing the following methods: negotiation, trade with other governmental entities or agencies, request for letters of intent, sealed bids, or request for proposals. The city may retain professional real estate services to aid in the disposal of property.~~

- ~~(1) — *Negotiation.* The city may negotiate the sale of city property with a particular person or entity, and no further advertising will be needed to effect a transfer.~~
- ~~(2) — *Sealed bids, requests for letters of intent, and requests for proposals.* At any time that city property is determined to be surplus property, the land may be offered for public disposition, and a notice shall be published by the city in a newspaper of general circulation in the city once not less than ten days before sealed bids, letters of intent, or proposals are due. The notice shall state, at a minimum, the date when sealed bids, letters of intent, or proposals shall be received and whether the sale is with or without reservation. Sealed bids, letters of intent, and proposals shall be accompanied by cashier's checks or certified checks payable to the city in an amount equal to at least ten percent of the disposition price.~~
- ~~(3) — *Transfer to governmental agencies.* The city may sell or transfer any of its property to any other governmental agency if the city council finds that:
  - ~~a. — A transfer of the property to the other governmental agency shall provide a benefit to the city; and~~
  - ~~b. — That the terms received by the city are fair and equitable.~~~~

~~Sec. 2-652. Default by purchaser; forfeiture of deposit.~~

~~In the event of a default on the part of any purchaser under contract for the sale of city property in making full payment or otherwise failing in the performance of the purchaser's obligations under the contract to purchase, as a minimum contractual remedy, the amount of the deposit shall be forfeited.~~

~~Sec. 2-653. Power to sell or lease.~~

~~Subject to the restrictive provisions of this division and section 42-1(a), the city council is empowered to engage in the sale of city property or the lease of city property now owned or subsequently acquired by the city. The deed or other form of conveyance or the lease agreement may place such conditions, limitations, and restrictions on the use of such property by the purchasers as the city council shall deem proper.~~

~~Sec. 2-654. Ordinance authorizing sale or lease.~~

~~(a) — The sale of city property shall not occur until an ordinance authorizing the sale has been duly advertised and adopted by the city council. Each ordinance shall contain a description of the land to be sold, the name and address of the proposed purchaser, the amount of the consideration and a statement of the terms and conditions, if any, of the sale.~~

~~(1) A supermajority vote consisting of five affirmative votes shall be required to authorize the sale of city property that has a market value that exceeds \$1,000,000.00.~~

~~(2) A supermajority vote consisting of five affirmative votes shall be required to authorize the sale of city property, less than two acres in size that is:~~

~~a. Designated by ordinance or resolution as park property;~~

~~b. Dedicated by ordinance or resolution by the city for public use; or~~

~~c. Having riparian and littoral rights and designated by ordinance or resolution as waterfront property.~~

~~(b) The lease of city property for a term exceeding ten years shall not occur until an ordinance authorizing the lease has been duly advertised and adopted by the city council. Each ordinance shall contain a description of the property to be leased, the name and address of the lessee, the amount of the consideration and a statement of the terms and conditions of the lease. The lease of city property for a term of ten years or less shall require approval of a resolution by the city council.~~

~~Sec. 2-655. Public hearing; notice.~~

~~(a) Before the sale of city property or the lease of city property as described in section 2-654, the city council shall first hold a public hearing. At least ten days prior to first reading of the ordinance, the city shall mail a courtesy notice to all abutting property owners. The notice shall be mailed to each property owner at his last known address as listed on the county property appraiser's most current tax roll as displayed in the internet at the time of submission of the petition or from such other source as staff deems reliable.~~

~~(b) Proof of such mailing by affidavit shall be filed with the city clerk, provided that failure to mail the notice or the mailing of the notice to an erroneous address or wrong property owner shall not invalidate any proceedings hereunder. Notice of the time and place of such public hearing shall also be given by publication once in a newspaper of general circulation in the city at least ten days prior to the date of the public hearing. The notice shall describe the property to be disposed of.~~

~~Sec. 2-656. Expenses of abstract of title.~~

~~The director of finance is authorized to pay for the expense of updating or obtaining an abstract of title or other form of title search on all property sold by the city, to be paid out of the sale price of the property.~~

~~Sec. 2-657. Payment of closing costs by purchaser.~~

~~Notwithstanding any rules of general practice apportioning costs attending the sale of property, purchasers closing on the sale of city property shall pay all closing costs, including, but not limited to, costs of survey, abstracting, all documentary stamps, the cost of any title insurance, all costs relating to purchase money or other mortgages, and the cost of publication~~



~~of any notices and ordinances. This requirement may be waived by the city council when the conditions of the sale have otherwise been determined to be in the best interest of the public.~~

~~Sec. 2-658. City attorney responsible for sale.~~

~~It shall be the responsibility of the city attorney to effect the closing of any city property which is sold under this division.~~

~~Sec. 2-659. Purchase agreement subject to division provisions and ordinances confirming sale.~~

~~Any agreement for the sale of city property shall contain a statement that the sale shall be subject to the terms and provisions of this division, and no such agreement shall be binding on the city until the adoption of an ordinance confirming the sale.~~

~~Sec. 2-660. Conveyance, lease or other disposition of real property.~~

~~Subject to all other provisions of this division, the conveyance of any interest in real property, titled in the name of the city, shall be authorized to be conveyed, leased, or otherwise transferred, by the city council upon the adoption of a resolution. Said conveyance, lease, or other disposition of said property, is hereby deemed to be an administrative act of the city, and said resolution shall be recorded in the public records of the county, with the instrument of conveyance.~~

SECTION 2. That Chapter 2 of the City Code of Melbourne, Florida, is hereby amended by adding Sections 2-645 through 2-648, which said sections read as follows:

Sec. 2-645. Conveyance of title to real property.

The city council may approve a conveyance of the city's title of ownership to real property provided that the following requirements are met:

- (1) The conveyance must be approved by resolution adopted by the city council, which resolution shall be recorded with the deed in the public records of Brevard County.
- (2) The purchase price of the conveyance must equal or exceed the city's estimate of fair market value of the city property, except for good cause shown to serve a public purpose.
- (3) For a conveyance reflecting an estimated fair market value of the city property in excess of \$100,000.00, the resolution must be adopted at a public hearing proceeded by notice, which notice shall consist of an advertisement in a daily newspaper of general circulation in the city and posting a copy of the advertisement upon the subject property and at city hall, all notice to be provided at least ten days prior to the public hearing. The conveyance of the property may not be divided for the purpose of evading the public hearing.
- (4) The requirements of section 42-3, City Code shall apply to a conveyance of "park property" or "waterfront property" as identified therein.

- (5) The conveyance must be in the best interests of the city.
- (6) The terms of the conveyance must conform to the requirements of applicable state and federal laws.

Sec. 2-646. Lease of real property.

The city council may approve a lease of real property owned by the city provided that the following requirements are met:

- (1) The lease must be approved by resolution adopted by the city council.
- (2) The rental price of the lease must equal or exceed the city's estimate of fair rental value of the city's property, except for good cause shown to serve a public purpose.
- (3) For a lease reflecting a term of more than 50 years and reflecting an estimated total fair rental value of the city property in excess of \$100,000.00, including renewal terms, the resolution must be adopted at a public hearing proceeded by notice, which notice shall consist of an advertisement in a daily newspaper of general circulation in the city and posting a copy of the advertisement upon the subject property and at city hall, all notice to be provided at least ten days prior to the public hearing. The lease of the property may not be divided for the purpose of evading the public hearing.
- (4) The requirements of section 42-3, City Code shall apply to a lease of "park property" or "waterfront property" as identified therein.
- (5) The lease must be in the best interests of the city.
- (6) The terms of the lease must conform the requirements of applicable state and federal laws.

Sec. 2-647. Exemptions.

a. Notwithstanding the foregoing, to the extent the following property interests qualify as conveyances of title to real property or leases in real property, such conveyances or leases, as applicable, are exempt from this division.

- (1) The conveyance of real property pursuant to an agreement approved by the city council for the use of federal Community Development Block Grant funds to provide housing in the city is exempt from this division of City Code.
- (2) The vacation of any right-of-way is exempt from this division and is subject to authorization by city council pursuant to chapter 52, article IV, City Code.
- (3) The lease of real property subject to the jurisdiction of the City of Melbourne Airport Authority pursuant to section 12-142, City Code is exempt from this division.

(4) The sale of city property, lease of city property or other disposition of any other interest in real property authorized by the city council on or prior to July 28, 2015 is exempt from this division.

b. As property interests that do not constitute conveyance of a fee simple title to real property or a lease of real property, the following property interests are not subject to this division:

(1) Easements.

(2) Licenses to use land.

(3) Sale or lease of personal property.

SECTION 3. Severability/Interpretation Clause.

(a) That in the event that any term, provision, clause, sentence or section of this ordinance shall be held by a court of competent jurisdiction to be partially or wholly unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect any of the other or remaining terms, provisions, clauses, sentences, or sections of this ordinance, and this ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) That in interpreting this ordinance, underlined words indicate additions to existing text and ~~stricken through~~ words include deletions from existing text.

SECTION 4. That this ordinance shall become effective immediately upon its adoption in accordance with the Charter of the City of Melbourne.

SECTION 5. That this ordinance was passed on the first reading at a regular meeting of the City Council on the 14<sup>th</sup> day of July, 2015, and adopted on the second/final reading at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

BY: \_\_\_\_\_  
Kathleen H. Meehan, Mayor

ATTEST:

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Cathleen A. Wysor, City Clerk

Ordinance No. 2015-28