

AGENDA REQUEST FORM

FOR: Council Meeting of October 3, 2017

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

**AN ORDINANCE TO AMEND § 34.27 SALE OF MUNICIPALLY OWNED REAL
PROPERTY OF THE FAYETTEVILLE CODE**

APPROVED FOR AGENDA:



City Attorney Kit Williams

September 25, 2017

Date



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Rhonda Lynch
Paralegal

TO: **Mayor Jordan**
City Council
Don Marr, Chief of Staff
Paul Becker, Chief Financial Officer

FROM: **Kit Williams, City Attorney**

DATE: **September 25, 2017**

RE: **Sale of City Owned Real Property**

Now that the City Council finally removed our Fayetteville Code's previous public bidding requirement for the sale of city owned real property, the Arkansas Legislature has placed a competitive bidding requirement into the Arkansas Code. Act 470 amended § 14-54-302 **Purchase, Lease and Sale Authorized**. It now requires the following:

"Municipal real estate or personal property to be disposed of as one (1) unit shall not be sold without competitive bidding if the amount exceeds twenty thousand dollars (\$20,000). . . ." A.C.A. § 14-54-302 (d). (Attached)

(D) and (E) of § 34.27 **Sale of Municipally Owned Real Property** conflicts with Act 470 and must be removed from the Fayetteville Code. The City Council could decide that with the new statutory competitive bidding requirements, this entire code section is no longer needed and should be repealed. I make no comment about this policy decision and have drafted an ordinance just to conform our current code to the new state law.

HB1483

Stricken language would be deleted from and underlined language would be added to present law.
Act 470 of the Regular Session

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Senator Irvin
6 By: Representative Baltz

A Bill

SENATE BILL 336

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE LAW REGARDING THE SALE, LEASE,
10 PURCHASING, AND DISPOSAL OF REAL AND PERSONAL
11 PROPERTY OF MUNICIPALITIES; AND FOR OTHER PURPOSES.

Subtitle

15 TO CLARIFY THE LAW REGARDING THE SALE,
16 LEASE, PURCHASING, AND DISPOSAL OF REAL
17 AND PERSONAL PROPERTY OF MUNICIPALITIES.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22 SECTION 1. Arkansas Code § 14-54-302 is amended to read as follows:
23 14-54-302. Purchase, lease, ~~and~~ sale, and disposal authorized.

24 ~~(a)(1) Municipal corporations are empowered and authorized to A~~
25 municipality may:

26 ~~(1) Sell~~ Sell, convey, lease, rent, ~~or~~ let, or dispose any real
27 estate or personal property owned or controlled by the municipal
28 ~~corporations. This power and authorisation shall extend and apply to all such~~
29 ~~real estate and personal property, including that which~~ municipality,
30 including real estate or personal property that is held by the municipal
31 corporation municipality for public or governmental ~~uses~~ and purposes; i

32 ~~(2) Municipal corporations are empowered and authorized to buy~~
33 Buy any real estate or personal property; i and

34 ~~(b)(1)(3)(A) Municipal corporations are also empowered and authorized~~
35 ~~to donate~~ Donate real estate or personal property, or any part thereof ~~of the~~
36 real estate or personal property, to the federal government or any agency

1 ~~hereof~~ of the federal government, for any one (1) or more of the following
2 purposes, that is, having the real estate, ~~or~~ personal property, or both,
3 activated, reactivated, improved, or enlarged by the donee.

4 ~~(2)(A)(B)~~ The ~~municipal corporation~~ municipality may donate the
5 fee simple title and absolute interest, without any reservations or
6 restrictions, in and to all real estate, ~~or~~ personal property, or both, or
7 any part of the real estate or personal property, to the federal government,
8 if this real estate or personal property was previously conveyed or otherwise
9 transferred by the federal government to the ~~municipal corporation~~
10 municipality without cost to the ~~municipal corporation~~ municipality.

11 ~~(B)(C)~~ All other donation instruments shall contain
12 provisions by which the title to the property donated shall revert to the
13 ~~municipal corporation~~ municipality when the donated property is no longer
14 used by the donee for the purposes for which it was donated.

15 ~~(e)(b)~~ The execution of all contracts and conveyances and lease
16 contracts shall be performed by the mayor and city clerk or recorder, when
17 authorized by a resolution in writing and approved by a majority vote of the
18 ~~city council~~ governing body of the municipality present and participating.

19 (c) The mayor or his or her authorized representative may sell or
20 exchange any municipal real estate or personal property with a value of
21 twenty thousand dollars (\$20,000) or less, unless the governing body of the
22 municipality shall by ordinance establish a lesser amount.

23 (d) Municipal real estate or personal property to be disposed of as
24 one (1) unit shall not be sold without competitive bidding if the amount
25 exceeds twenty thousand dollars (\$20,000) or the maximum provided by
26 resolution, unless the mayor certifies in writing to the governing body of
27 the municipality that in his or her opinion the fair market value of the item
28 or lot is less than the amount established by ordinance.

29 (e)(1) If personal property of the municipality becomes obsolete or is
30 no longer used by a municipality, the personal property may be:

- 31 (A) Sold at public or internet auction;
32 (B) Sent to the Department of Finance and Administration's
33 Marketing and Redistribution Section;
34 (C) Transferred to another governmental entity within the
35 state; or
36 (D) Donated under this section.

1 (2) If an item of personal property is not disposed of under
 2 subdivision (e)(1) of this section, the item may be disposed of in the
 3 landfill used by the municipality if the mayor or his or her authorized
 4 representative certifies in writing and the governing body of the
 5 municipality approves that:

6 (A) The item has been rendered worthless by damage or
 7 prolonged use; or

8 (B) The item has:

9 (i) Only residual value; and

10 (ii) Been through public auction and not sold.

11 (f)(1) A record shall be maintained of all items of personal property
 12 disposed of under this section and reported to the governing body of the
 13 municipality.

14 (2) The municipal fixed asset listing shall be amended to
 15 reflect all disposal of real estate and personal property made under this
 16 section.

17
 18 SECTION 2. Arkansas Code § 14-58-306 is repealed.

19 ~~14-58-306. Disposal of municipal supplies, etc.~~

20 ~~(a) In a city of the first class, city of the second class, or~~
 21 ~~incorporated town, the mayor or his or her authorized representative may sell~~
 22 ~~or exchange any municipal supplies, materials, or equipment with a value of~~
 23 ~~twenty thousand dollars (\$20,000) or less, unless the municipal governing~~
 24 ~~body shall, by ordinance, establish a lesser amount.~~

25 ~~(b) No item or lot of supplies, material, or equipment that is to be~~
 26 ~~disposed of as one (1) unit shall be sold without competitive bidding if the~~
 27 ~~amount exceeds twenty thousand dollars (\$20,000) or the maximum provided by~~
 28 ~~ordinance, unless the mayor shall certify in writing to the governing body~~
 29 ~~that, in his or her opinion, the fair market value of the item or lot is less~~
 30 ~~than the amount established by ordinance as indicated.~~

31 ~~(c)(1) If an item of personal property belonging to a municipality~~
 32 ~~becomes obsolete or is no longer used by a municipality, it may be:~~

33 ~~(A) Sold at public or Internet auction;~~

34 ~~(B) Sent to the Marketing and Redistribution Section of~~

35 ~~the Office of State Procurement of the Department of Finance and~~
 36 ~~Administration; or~~

1 ~~(C) Transferred to another governmental entity within the~~
2 ~~state.~~
3 ~~(2) If an item is not disposed of under subdivision (c)(1) of~~
4 ~~this section, the item may be disposed of in the landfill used by the~~
5 ~~municipality if the mayor or his or her authorized representative certifies~~
6 ~~in writing and the governing body of the municipality approves that it has:~~
7 ~~(A) Been rendered worthless by damage or prolonged use; or~~
8 ~~(B)(1) Only residual value; and~~
9 ~~(1) Been through public auction and not sold.~~
10 ~~(d)(1) A record shall be maintained of all items disposed of and~~
11 ~~reported to the governing body.~~
12 ~~(2) The municipal fixed asset listing shall be amended to~~
13 ~~reflect all disposal of property made under this section.~~

APPROVED: 03/13/2017

- (B) No favoritism is allowed to the city employee over other possible service providers;
- (C) Such services are not of the same type as performed by the city employee in his or her regular city job, nor are services for the department wherein the employee works;
- (D) The employee's immediate supervisor specifically approves such extension of employee service and ensures it will not adversely affect the employee's regular city employment duties;
- (E) City employees who are not within the Parks and Recreation Department are specifically allowed to work as independent contractors as scorekeepers, referees and umpires for the Fayetteville Parks and Recreation Department without the need for a City Council resolution. (Code 1965, §2-70; Ord. No. 3013, 6-5-84; Code 1991, §34.26; Ord. No. 5351, 9-7-10)

34.27 Sale Of Municipally Owned Real Property

- (A) The city may sell real property only after the City Council has passed a resolution expressly authorizing such sale. The City Council shall determine whether the property should be rezoned or appraised prior to its sale.
- (B) Such City Council resolution shall contain a specific finding by the City Council that the subject real property is no longer needed for municipal purposes.
- (C) Public notice, that the City Council is considering the sale of the real property at the City Council meeting with the appropriate date and time of the meeting and which shall include the property's address, acreage, improvements and potential purchase price, shall be given not less than fifteen (15) days before the City Council may consider a resolution to approve a sale of City real property (except rights of way or easements for public utilities) by all of the following means:
 - (1) First class mail to all adjacent property owners;
 - (2) Prominently displayed signs on the property; and
 - (3) Publication in a newspaper of general circulation in the city.
- (D) The city may exchange real and personal property with other cities or Washington County only after authorization by ordinance passed by the City Council. The City Council through such ordinance may place limits on the uses that will be allowed of such property as part of the exchange of property agreement.
- (E) The City Council authorizes the use of a realtor for the sale of the two (2) houses at Gulley Park. The realtor shall be selected in accordance with the city's formal competitive bidding procedures. All offers for the sale or purchase of this city property shall be subject to final approval by the City Council.

(Ord. No. 4358, 1-2-02; Ord. No. 4380, §1, (Ex. A), 3-19-02; Ord. No. 4651, 12-07-04; Ord. No. 4752, 9-06-05; Ord. No. 5465, 12-6-11; Ord. No. 5497 05-01-12; Ord. No. 5779, 6-16-15)