

Legislative #

100630

RESOLUTION NO. 100630

PASSED _____

A resolution of the City Commission of the City of Gainesville, Florida, adopting real property policies which govern the acquisition and disposition of property by the general government of the City; providing directions to the Clerk of the Commission; and providing an immediate effective date.

WHEREAS, Article I of the Charter of the City of Gainesville vests the City with broad general governmental, corporate and proprietary powers to be used for municipal purposes, except as otherwise provided by law. In addition to its general powers, Section 1.04(1) of the City’s Charter vests the city with special powers to acquire by purchase, gift, devise, lease, lease-purchase, condemnation, or otherwise, real or personal property, or any estate or interest in property, within and without the city limits, and for any of the purposes of the city, and to improve, sell, lease, mortgage, pledge, or otherwise dispose of its property or any part of its property.

WHEREAS, the purpose of the Real Estate Policies is to establish guidelines to govern the acquisition and disposition of real property by the city. These policies shall also govern the acquisition or disposition of personal property affixed to or located on real property that is being acquired by or disposed of by the city.

WHEREAS, to more fully and effectively carry out the city’s general and special powers, the City Commission, by resolution, wishes to adopt these “Real Property Polices”.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

1 **Section 1.** The City of Gainesville Real Property Polices are hereby adopted in their
2 entirety to read as set forth in Exhibit "A", attached hereto and incorporated herein as if set forth
3 in full.

4 **Section 2.** If any word, phrase, clause, paragraph, section or provision of this resolution
5 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
6 finding shall not affect the other provisions or applications of the resolution which can be given
7 effect without the valid or unconstitutional provisions or application, and to this end the
8 provisions of this resolution are declared severable.

9 **Section 3.** All resolutions, or parts of resolutions, in conflict herewith are to the extent of
10 such conflict hereby repealed.

11 **Section 4.** This resolution shall become effective immediately upon final adoption.

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13 **PASSED AND ADOPTED** this _____ day of _____, 2013.

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CRAIG LOWE
MAYOR

Attest:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

**CITY OF GAINESVILLE
REAL PROPERTY POLICIES**

**Adopted by City Commission Resolution No. 110876
On April 4, 2013**

I. AUTHORITY; AMENDMENT; EFFECTIVE DATE

Article I of the Charter of the City of Gainesville (the "City") vests the City with broad general governmental, corporate and proprietary powers to be used for municipal purposes, except as otherwise provided by law. In addition to its general powers, Section 1.04(1) of the City's Charter vests the City with special powers to acquire by purchase, gift, devise, lease, lease-purchase, condemnation, or otherwise, real or personal property, or any estate or interest in property, within and without the city limits, and for any of the purposes of the City, and to improve, sell, lease, mortgage, pledge, or otherwise dispose of its property or any part of its property.

To more fully and effectively carry out these general and special powers, the City Commission has adopted, and may amend, these policies by resolution.

These policies, and any amendment(s), shall become effective on the date the resolution approving same is adopted by the City Commission.

II. PURPOSE; SCOPE

The purpose of these policies is to establish the regulations which shall govern the acquisition and disposition of real property by the City. These policies shall also govern the acquisition or disposition of personal property affixed to or located on real property that is being acquired by or disposed of by the City.

These policies do not apply to Gainesville Regional Utilities or the Gainesville Community Redevelopment Agency, each of which may have adopted real property policies, procedures or guidelines to govern its transactions. Further, these policies do not apply to any acquisition or disposition of property between or among the City, Gainesville Regional Utilities or the Gainesville Community Redevelopment Agency.

These policies are not intended, nor shall they be interpreted, to replace, supercede, amend or create a conflict with any other local, state or federal legal requirements that are applicable to any particular transaction.

III. ADMINISTRATION

These policies shall be administered by the City's land rights coordinator. The land rights coordinator shall operate the City's real property office under the supervision and direction of the City's public works director, who reports to the city manager. The city manager, or his designee, shall have the power to issue procedures pursuant to and consistent with these policies and shall have final authority within the City to interpret these policies.

The real property office shall:

- A. Supervise and provide technical support all City departments in making acquisitions and dispositions of interests in real property on behalf of the City to ensure that transactions are conducted in accordance with these policies;
- B. Maintain the City's permanent records of real property acquisitions and dispositions in order to document transactions in accordance with these policies;
- C. Obtain review and approval, as to form and legality, of the City Attorney's Office on transaction documents;
- D. Maintain a working relationship, based on integrity and trust, with all parties to a real property transaction while ensuring that the City's interests are satisfactorily pursued;
- E. Conduct negotiations and attend all closings or arrange for execution of documents for the acquisition or disposition of real property; and
- F. Make reports to the City Commission of all acquisitions or dispositions of property on a regular basis.

IV. DEFINITIONS

Acquisition: A general term describing when the City obtains or is granted an interest in real property, such as by deed, lease, license, usage or presumption (pursuant to Florida law), eminent domain or by any other manner allowed by law.

Agreement: A general term usually describing a common view of two or more parties regarding the rights and obligation of each with regard to a given subject. All agreements for the acquisition or disposition of real property by the City shall be in writing.

Appraisal: A written report that establishes the market value of property and includes, without limitation, the legal description of the property, a location map and site description, photos of the subject property, a statement of assumptions and limiting conditions and analysis and conclusions as to highest and best use, value, comparable sales data and market conditions. Appraisals shall be prepared in accordance with the Uniform Standards of Professional Appraisal Practice by an appraiser holding a current license in good standing through the Florida Department of Business and Professional Regulation. In addition, if issuing an appraisal for

residential real property of one to four units, the appraiser must hold a current certification as a Certified Residential Appraiser or Certified General Appraiser; or must hold a current MAI, SRA, or SRPA designation. If issuing an appraisal report for property other than residential property of one to four units, the appraiser shall hold a current MAI designation.

Closing: The time and place for the exchange of documents and tender of payment to finalize the acquisition or disposition of real property.

Competitive manner: Utilizing a process that is open and fosters competition, such a process may include but is not limited to, posting signs for sale or lease on the property, posting information concerning the availability of the property on the City's website, listing the property with a multiple listing service by a licensed real estate broker or issuing a written solicitation (such as an invitation to bid or request for proposals.)

Dedication: The setting aside of land for a public use by its owner, together with acceptance by or on behalf of the public, by the making, signing, acknowledging and recording of a map or plat of land in accordance with general law upon which areas appear as devoted to public use for such purposes as streets and utility and drainage easements.

Deed: An instrument of conveyance intended to pass title, in one of the following three forms:

1. Quitclaim deed: An instrument of conveyance intended to pass such title, interest, or claim as the grantor may have in the property and which contains neither warranties nor covenants of title.
2. Special Warranty Deed: An instrument of conveyance which covenants from the grantor an estate in property free from encumbrances and with defense of title as to claims of superior title arising by, through or under the grantor only.
3. Warranty deed: An instrument of conveyance which covenants from the grantor an estate in property free from encumbrances and with defense of title as to all claims of superior title.

Disposition: A general term describing when the City relinquishes or grants its interest in real property, such as by lease, license, or deed.

Easement: A right to use the land of another for a specific purpose that is not inconsistent with the use by the owner of the land. Easements are generally non-exclusive and run with the land, unless otherwise specified in the Easement document. Easements may be permanent or temporary in duration.

Environmental assessment: An "all appropriate inquiries" investigation of the property conducted by an environmental professional in accordance with the standards and practices set forth in 40 CFR 312 as published in the Federal Register on Nov. 1, 2005 and as amended from time to time. This may include a Phase I and/or a Phase II, or other specialized assessment of the property for environmental concerns.

Fee title or fee simple title: An estate in real property belonging to the owner and alienable or transferable by owner absolutely and simply. An absolute estate in perpetuity and the largest possible real property right an owner can have.

License: A revocable, unassignable personal right to go on the property of another for a limited purpose which does not operate to confer or vest in the licensee any title, interest or estate.

Lease: An agreement by which the owner of real property grants the right of possession to another, for a specified period of time and for a specified consideration.

Marketable title: A legally defensible title which is free from material defects, acceptable to a reasonable purchaser, and capable of being insured by a reputable title underwriter licensed in the state of Florida.

Option: An agreement that grants one party a specified period of time during which it may, but is not required to, purchase the property of another.

Permit: A written, revocable, unassignable authorization to use the property of the permit grantor to do some act not allowable without such authority; generally for a very temporary period of time.

Property or real property: Land, including that which is erected upon, growing upon or affixed to land, such as structures, fixtures and crops.

Public purpose: A purpose which has as its objective the promotion of the general public health, safety, and welfare of the residents of the City of Gainesville and not the sole welfare of, or inuring to the sole benefit of, an individual or specific class of persons.

Public right-of-way: Public highways, roads, streets or alleys, whether presently owned by or dedicated to the City or hereafter acquired or dedicated, or for which the City exercises right of management or control; and includes the surface, the air space over the surface and the area below the surface.

Public utilities: Utilities owned and maintained by the City, including, but not limited to storm drainage, water, wastewater, natural gas, electric, and telecommunications.

Surplus: Property which no longer serves a public purpose, or is in excess of the City's needs, or the sale of which would serve a greater public purpose than the retention of the property.

Vacation: Release or abandonment of public rights in property.

V. PROCEDURES/REQUIREMENTS FOR ACQUISITION OR DISPOSITION

A. Manner of Disposition.

Prior to fee title disposition by the City, the City Commission must find and declare that the property is surplus. This finding and declaration shall be embodied in the form of a Resolution adopted by the City Commission after 5pm during a regular or special meeting of the City Commission.

All surplus property shall be disposed of in a competitive manner. However, nothing contained in these policies is intended or shall be interpreted as limiting the right of the City to achieve specific objectives in its disposition of surplus property. For example, if the City Commission determines that it would like to offer to sell or donate a surplus residential lot for construction of a low-income home by a non-profit organization, the City can, in its competitive solicitation, limit the responses to non-profit organizations.

- B. Manner of Acquisition. Prior to fee title acquisition by purchase or eminent domain by the City, the approving official (as specified in C. below) must find that the acquisition of the property will serve a public purpose.
- C. Negotiation/Contract. The city manager, his designee, or the land rights coordinator may enter into non-binding negotiations for the acquisition or disposition of property. When approval of the citizen electorate or the City Commission is not required, the city manager is authorized to execute binding agreements for the acquisition or disposition of property. When approval of the citizen electorate or the City Commission is required, the city manager is authorized to execute agreements for the acquisition and disposition of real property, provided such agreements are made expressly contingent upon obtaining an appraisal and upon obtaining approval of the citizen electorate and/or the City Commission. No agreement for acquisition or disposition shall be binding on the City until approved as follows:

Approval of the **citizen electorate** is required for disposition or conversion of use of property listed on the “City of Gainesville Registry of Protected Public Places” in accordance with the requirements of Section 5.09 of Article V of the Charter of the City of Gainesville, Florida.

The City Commission shall not approve a contract for the purchase or sale of fee title to real property at a cost of \$100,000 or more until the City has first obtained an appraisal of the property.

Approval of the **City Commission** is required for:

- sale or purchase of real property valued at more than \$100,000
- leases or licenses that exceed five years in term or \$50,000 in annual rent or other payment

- permanent easements, or other forms of documents, which grant access to City property for more than two years
- all transactions involving real property which are either not contemplated by this policy, or for which approval by the City Manager or Department Director is not provided by this policy

Approval of the **City Manager** is required for:

- Sale or purchase of real property valued at \$25,000 to \$100,000
- leases or license agreements that exceed one year in term but do not exceed four years in term, or that exceed \$25,000 in annual rent or other payment
- temporary easements, or other forms of documents, which grant access to City property for a period of two years or less
- settlement of any action in eminent domain for an amount of \$100,000 or less, or for an amount that is no more than 20% of the appraised value of the property being taken, provided the City Attorney has approved or recommended approval of the settlement

Approval of the **Department Director** (as listed in Sec. 2-196, of the City Code of Ordinances) is required for:

- Sale or purchase of real property valued at \$24,999 or less, and
- Leases or license agreements that are for one (1) year in term or less, or \$24,999 or less in annual rent or other payment.

D. Due Diligence. The real property office shall conduct such due diligence as it deems appropriate for each acquisition; however, at a minimum, it will generally obtain:

1. an environmental assessment for property with known or suspected environmental contamination;
2. a survey (certified to the City) for unplatted lands; and
3. an owners policy of title insurance for all fee simple purchases by the City. In all other acquisitions, the real property office shall obtain a title policy, a title search, or an ownership and encumbrance report, as it deems appropriate, in order to confirm ownership and to ascertain any encumbrances on the property.

E. Closing/Conveyance. The city manager, or assistant city manager authorized to act in the absence of the city manager, is authorized to execute all necessary closing documents on behalf of the City, except that the Mayor, or Mayor Pro-tem in the absence of the Mayor, shall execute and the Clerk of the Commission shall attest any permanent easement or deed. A special warranty deed shall be used in all conveyances of fee title from the City.

- F. Disposition of Proceeds. Any proceeds from the disposition of park property (or property dedicated to the City for park purposes) shall be used exclusively for park purposes, pursuant to Section 95.36, Florida Statutes and the City Comprehensive Plan.

VI. VACATION

Upon request of an abutting property owner or upon the City's initiative, public rights-of-way or public places may be vacated by the City in accordance with the City Land Development Code. The vacation shall be accomplished by City ordinance and the City may require a vacation agreement. The ordinance shall identify any rights retained by the City, or waive same, and shall be recorded in the public records of Alachua County. In vacating rights, the City does not grant title, it merely releases the public interest in and to the property, with title passing by operation of law.

VII. PERMITS

Except as otherwise provided by City Code, the city manager or his designee shall have the power and authority to grant permits for the temporary utilization of City property, in accordance with uniform procedures or guidelines promulgated by the city manager or his designee for the issuance of such permits.

VIII. ACQUISITION/DISPOSITION OF PROPERTY WITH STATE OR FEDERAL FUNDS

In the event the City uses state, federal or other grant funds for the acquisition, improvement or disposition of property, the City shall follow the applicable local, state or federal laws or program guidelines governing the use of such funds. In the event of conflict between such laws or guidelines and these policies, the laws and program guidelines governing the use of such funds shall control.

IX. RESERVATION AND RELEASE OF SUB-SURFACE RIGHTS

Section 270.11, Florida Statutes, automatically acts to reserve unto the City a three-fourths interest in all the phosphate, minerals and metals and an undivided one-half interest in the petroleum on land that is conveyed by the City. The statute allows the City to expressly choose not to reserve such interests and also permits the City to sell or release the interests upon petition by the purchaser/property owner with a statement of reasons for such release.

For the fee simple disposition of property that has a residential zoning designation (regardless of the size) or that is one acre or less in size (regardless of the zoning designation), the City hereby expressly chooses not to reserve the interests that would otherwise be automatically reserved by

Section 270.11, Florida Statutes. The contracts and deeds for all such dispositions should contain a statement to that effect.

With respect to all interests automatically reserved prior to the effective date of these policies or that are zoned other than residential or are larger than one acre in size, the City will consider release of such interests in accordance with the requirements of the Florida Statutes and such other procedures as the City may implement.