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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE
...in cooperation with the Tennessee Municipal League

TECHNICAL bulletin

August 24, 2012

SELLING SURPLUS CITY PROPERTY: SUGGESTIONS FOR AN ETHICAL AND TRANSPARENT PROCESS

David Angerer, Municipal Management Consultant

INTRODUCTION

Every city will occasionally find itself in possession of certain equipment, machinery, or materials that it no longer needs or wants. In most cases, the surplus property involves materials or equipment that have become obsolete or unused over the years, and the city decides it is time to unload these useless items, sell them to the public, and put the proceeds from the sale to good use.

A well-managed municipality will have policies and procedures in place to assure that the sale of surplus property is conducted in an orderly, profitable, and ethically transparent manner. Failure to enact such policies — and to have them firmly in place prior to putting any surplus property up for sale — invites problems that may have unpleasant results for the city and its officers.

This publication concerns itself specifically with the disposal of surplus items of equipment and materials. It does not pertain to the sale of surplus real estate that a municipality may want to sell. The strategies for selling surplus equipment differ from those involving the sale of real estate – and case law is very clear that when it comes to real estate, cities can sell it to whomever they wish, provided it is in the city's interest.

DEFINITIONS AND EXAMPLES

A good working definition of "surplus city property" would be: Any city-owned vehicles, equipment, materials or similar goods that are obsolete and/or unused by the city, are likely to remain so for the foreseeable future, and that have been declared to be surplus to the city's needs by a vote of the city's governing board.

Items most commonly sold by cities as surplus property include:

Vehicles and Equipment

- Fire trucks that have been replaced by newer models
- Used automobiles
- Lawn mowers and tractors
- Old computers and related equipment
- Obsolete or inefficient hand tools
- Desks, chairs, and other office equipment
- Unclaimed goods. Items found on city properties and have not been claimed by their owners after a reasonable period of time — bicycles, for instance.

Materials

- Unusable remnants of bulk supplies (copper wire, water pipes, etc.)

- Items salvaged from building demolition or remodeling projects.

GOALS OF A WELL-MANAGED SURPLUS PROPERTY POLICY

A good surplus property policy will focus on five important goals:

- **Economy.** The policy should stipulate a process that allows for the city to maximize the proceeds it receives from the sale of surplus property. Additionally, the policy will minimize the costs associated with such disposal. It should not, for example, cost more to conduct a surplus property sale than the amount of money the city stands to realize from such sale.
- **Fairness.** A good policy will assure that every citizen in the community has an equal opportunity to know about the impending sale of surplus property and a fair chance to submit a winning bid or proposal.
- **Protection Against Abuse.** Every surplus property policy should protect against the diversion of sale proceeds to the city's officers, employees or others — and assure that property, which still has a reasonable use to the city, is not sold. It is not unheard of, for example, for a city employee to offer surplus property for sale and to pocket the proceeds for himself. Often in such cases, the governing board and administrative staff were unaware of the offering and sale. And, in many cases, the sold property had considerable remaining use for the city.
- **Product Liability Protection.** Some surplus items may simply be too dangerous to offer for sale. Should the buyer be injured (or worse!) when using these items, the city might be called upon to defend its sale in court. A good policy should provide examples of items that will not be sold as surplus property, and require a review before putting items up for sale.
- **Protection of the City's Image and Reputation.** A surplus property resolution should be developed with the city's reputation for ethical behavior in mind. After the sale, neither the city nor its officers and employees should be the subject of claims of unethical or illegal behavior. A well-written policy, and some due diligence by the governing board and administration, will assure that this important target is met.

DECIDING WHAT TO DECLARE AS SURPLUS. WHO MAKES THE CALL?

No city property should ever be declared surplus except by a vote of the governing board. The board's decision should be reflected in a resolution — one that itemizes and describes the items being declared surplus, and authorizes the city staff to proceed with the sale. Such a policy serves to insulate the city staff from accusations of improperly selling (or giving away) city assets.

Recommendations to declare items as surplus would best be made by department heads, supervisors, managers, etc. But governing boards should make the final decision. The recommendations made by the staff should be in writing and provide defensible reasons for making the declaration. For its part, board members should carefully question recommendations to sell high value items, withholding their support for the proposed sale until they are satisfied that the public interest is being served.

The governing board's decision to declare property as being surplus should be made by means of a written resolution. For each item proposed for sale, the resolution should include two key pieces of information:

- The reason(s) for declaring the property to be surplus to the city's needs. The reasons for selling the property should be specific and verifiable.
- In the case of surplus city equipment, the resolution should refer to the make, model, serial number and age of each item proposed for sale. Additionally, automobiles should be referred to by the Vehicle Identification Number (VIN) and the approximate mileage of the vehicle.

Prior to the vote, each board member should carefully read the proposed resolution and ascertain for themselves that sound reasons exist for declaring the property surplus to the city's needs.

DOING THE HOMEWORK PRIOR TO THE SALE

While there are no state laws regulating a municipality's authority to advertise and sell surplus property, care must still be taken to assure that the city has the legal right to sell the items proposed for classification as surplus property. To prevent trouble after the sale, the following sources should be checked before seeking the board's approval for the sale:

- **The City Charter.** It is possible that a portion of your city's charter may disallow the sale of certain high value properties, at least without a referendum of the citizens. Selling the municipal gas or electric utility, for example, might require such a vote. In rare cases, the charter may also specify a general procedure for disposing of surplus property that the city would be obliged to obey.
- **The City Code.** Here again, the city may have enacted an ordinance that prescribes a procedure for selling city property. Similarly, it would be wise to see if any resolutions or motions of the board exist pertaining to surplus property sales. Your city's purchasing policy may also include provisions for selling surplus city property.
- **State Statutes.** State law generally recognizes the city's authority to decide what constitutes surplus property. But every municipal official and employee needs to be aware of *Tennessee Code Annotated* § 6-54-125, which makes it unlawful for any municipal official or employee to purchase surplus property from their municipality except by means of a bid at a public auction. This prohibition extends for six months after the employee or official leaves office. Violation is a Class A misdemeanor.
- **Contracts and Agreements with Other Parties.** You should be aware that contracts may exist that preclude the city from selling certain properties that were acquired by means of donations or grants. Certain pieces of equipment purchased with grant funds might be complicated to sell. The terms of the grant may either prohibit the sale or require that the sale proceeds are shared with the grantor. It would be wise to review the grant documents signed by the city prior to offering such equipment for sale.

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SELLING SURPLUS CITY PROPERTY: SUGGESTIONS FOR AN ETHICAL AND TRANSPARENT PROCESS

SOME IDEAS FOR DEVELOPMENT OF A SURPLUS PROPERTY POLICY

A sound policy for the selling of surplus property would include the following considerations:

- **Appraisal of the item.** The city should not sell surplus property unless and until the governing board has a firm understanding of the value of the item proposed for sale. The appraisal need not be a long and highly documented report such as real estate appraisals used in eminent domain proceedings, but it should provide some assurance to the community that the full value of the property was known and understood by the board prior to the sale. The appraisal should be the basis of accepting or rejecting bids received by the city for the sale.
- **Estimates.** It will not always be practical to obtain an appraisal of lower value items owned by the city — old automobiles, obsolete electronic equipment, etc. In such instances, the city should still get an estimate from some person or firm that specializes in the product proposed for sale. These estimates will not be as official as a written appraisal, but should suffice to give the governing board a realistic idea of the property's value.
- **Assign Responsibility for Conducting the Sale.** The policy should assign responsibility for the sale to a specific employee, agent, or department. The surplus property resolution can simply direct the appropriate employee to arrange the sale of the item or property.
- **Minimum Bid to be Specified.** Except for very low value items, the policy should require the governing board to set a minimum threshold for accepting bids on surplus property offered for sale. When possible, the city's sale advertisement should refer to this threshold to minimize the submission of unacceptably low bids.
- **Auction vs. Sealed Bids.** The city might consider holding a public auction to sell its surplus property — a gathering of interested parties in a common place and time for the purpose of bidding on items offered for sale. There are two advantages to this method. First, a well attended auction is entirely transparent and understood by the public. Accusations that the city ignored certain bids can be avoided – protecting the city against claims of corruption. Sealed bids also may be used to sell surplus property and in some cases may be entirely appropriate for selling surplus property. A good city surplus property policy would provide some general guideline for when either of these sales methods are to be used.
- **Advertisement Policy.** The city should stipulate when and where surplus property sales will be advertised. For low value items, the local newspaper and the city's website would be sufficient for notifying the public of the impending sale. For higher value items, the city would do well to advertise on a regional or even statewide basis and send invitations to bid to persons and entities thought likely to be interested in the sale. Cities should also be open to advertising surplus property on websites such as govdeals.com which will open bidding to a huge potential market,
- **Dangerous Items.** It is wise for a city to avoid selling certain items of surplus property, which by virtue of their purpose, design, or obsolescence

are inherently dangerous. Included in this category would be certain chemicals that might be toxic if mishandled by an uninformed buyer, defective equipment that might cause injury to persons unfamiliar with the item, etc. A police department, for example, might be wise to limit the sale of surplus firearms and other dangerous weapons to other law enforcement agencies. Similarly, some pieces of equipment known to be dangerously defective might best be sold for scrap rather than to a citizen who could be harmed by it.

- **Prohibited sales.** It bears repeating here that T.C.A. § 6-54-125 does not allow members of a municipal governing board or municipal employees to purchase surplus property from the cities they serve unless the sale was made by means of a bid at a public auction. A sealed bid process, therefore, must not result in the sale of surplus property to the board members or employees.

  It will look much better to the public, however, if the city's surplus property policy discourages all board members and employees from bidding in any public auctions conducted by the city, or from receiving surplus property offered for sale by the city. Regardless of the city's effort to assure a fair and legal bidding process, the public will likely view surplus property sales to city officers and employees as suspicious.

  The big loophole in such a policy, however, is for city officers or employees to have a spouse or friend do the bidding on their behalf — obtaining the surplus property through a straw man. This is not, however, a particularly clever ruse. Once the straw man hands the property over to the city official or employee, the story is likely to leak out and become public knowledge. The resulting publicity will not reflect well on the parties involved.
- **Removal of City Logos.** Especially in the case of motor vehicles, care should be taken to remove all logos and other symbols on the surplus property prior to the sale. This will reduce the opportunity for citizens to think the vehicle has been stolen, or is being used improperly, etc.

A FINAL WORD

Once the city has developed and enacted a surplus property policy, copies of the policy should be distributed to every department head, the city's property manager, and any others who might be involved in selling things the city no longer needs. A short training session also may be in order to assure that everyone understands the new policy and the implications for non-compliance.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ANYTOWN, TENNESSEE, TO ESTABLISH A POLICY FOR THE SALE AND DISPOSAL OF PROPERTY DETERMINED TO BE SURPLUS TO THE CITY'S NEEDS.

WHEREAS, it is the public interest for the city of Anytown to periodically sell or dispose of certain machinery, equipment, or materials which, by nature of its obsolesence, low value, or disrepair, has been determined by the Board of Mayor and Aldermen to be surplus to the realistic and foreseeable needs of the city; and

WHEREAS, the Board of Mayor and Aldermen wishes to establish a uniform policy, which provides that obsolete and unneeded property will be offered for sale to the general public in an open, transparent, and cost-effective manner, and assures against usable and valuable property from wrongfully being declared obsolete and offered for sale.

NOW, THEREFORE, BE IT RESOLVED BY THE ANYTOWN BOARD OF MAYOR AND ALDERMEN, AS FOLLOWS:

1. **Title.** This Resolution shall be known as the "Anytown Surplus Property Policy" and shall be the official guideline for the sale of the city's surplus properties.

2. **Authority to declare property as surplus to the city's needs.** Any member of the Board of Mayor and Aldermen, the city manager, any department head, the city's property manager, or the city's purchasing manager may nominate any city-owned property for disposal or sale as surplus property. All such nominations shall be made on forms developed by the city and signed by the person making the nomination. Signed nominations shall be forwarded to the Board of Mayor and Aldermen for the final decision authorizing the sale. It shall be the official policy of the city of Anytown that no city-owned property shall be sold, or offered for sale, as surplus property without prior authorization by the Board of Mayor and Aldermen. The board's authorization to sell surplus property shall be in the form of a Resolution.

3. **Unauthorized sales.** Any employee of the city of Anytown found to have sold, or offered for sale, any city-owned property in violation of the Anytown Surplus Property Policy shall be subject to disciplinary action and, if applicable, criminal prosecution.

4. **Surplus property nomination form.** The City Recorder shall develop a form, which shall be used by city officials to nominate surplus property for sale. As a minimum, such form shall contain the following information:

   (a) A brief description of the item proposed for sale, including manufacturer, model number, serial number, age and condition;

(b) The department or office to which the property is assigned.

(c) An explanation of why the property is no longer needed by the city.

(d) An estimate of the current in-place value of the property.

(e) The name and signature of the person making the nomination.

5. **Surplus property criteria.** All signed surplus property nomination forms shall be promptly forwarded by the City Recorder to the Board of Mayor and Aldermen. Before classifying any property as being surplus, the Board of Mayor and Aldermen shall consider the following:

(a) The age and condition of the property;

(b) The cost of replacing the property, if any;

(c) The anticipated remaining life of the property;

(d) The estimated value of the property;

(e) Whether the property might reasonably, safely, and efficiently be used by another city department or office.

6. **Sale procedures.** Unless otherwise directed by the Board of Mayor and Aldermen, all surplus property approved for sale shall be sold according to the following procedure:

(a) The City Manager shall be wholly and solely responsible for advertising and conducting all surplus property sales.

(b) The preferred method of sale shall be a public auction, on a cash basis. When a public auction is not practical or efficient, the board may direct the sale to take place by means of sealed bids. The opening of all sealed bids shall take place in a meeting open to all bidders and the general public.

(c) It shall be the city's policy that sales of surplus property shall be awarded to the highest bidder.

(d) All surplus property auctions shall be advertised at least 30 days in advance in a newspaper of local circulation. Additionally, the City Manager is encouraged to advertise surplus property sales on the city's website, and with posters or notices placed in public facilities throughout the city.

(e) Prior to the sale, all city logos or other symbols are to be removed or destroyed from the items to be sold.

7. **Sale of dangerous property.** It shall be the policy of Anytown to avoid the sale of surplus property that might reasonably be dangerous or hazardous to the ultimate purchaser. Dangerous or hazardous items shall include, but are not limited to, the following:

(a) Surplus firearms and other weapons. Such items may only be offered for sale to a public law enforcement agency.

(b) Explosives

(c) Volatile or highly toxic chemicals

(d) Equipment and materials that cannot be operated or used safely due to obsolescence, product defect, lack of maintenance, etc.

8. **Prohibited sales.** No member of the Anytown Board of Mayor and Aldermen shall purchase, attempt to purchase, or otherwise take possession of any item of surplus property offered for sale by the city of Anytown. Any employee of the town of Anytown who purchases, attempts to purchase, or otherwise takes possession of any item offered surplus property offered for sale by the city of Anytown shall be subject to disciplinary action up to and including termination of employment.

9. **Distribution.** The City Manager is hereby directed to distribute a copy of this resolution to every employee of the city of Anytown and in each copy of the city's employee handbook issued after the effective date of this Resolution.

10. **Effective date**. This Resolution shall be in full force and effect from and after its date of adoption by the Anytown Board of Mayor and Aldermen.

PASSED AND APPROVED THIS _____ DAY OF _____, 2012
BY A ROLL CALL VOTE OF THE ANYTOWN BOARD OF MAYOR AND ALDERMEN.

RESOLUTION NO. _____

A RESOLUTION OF THE ANYTOWN, BOARD OF MAYOR AND ALDERMEN TO DECLARE CERTAIN VEHICLES OWNED BY THE CITY TO BE SURPLUS TO THE CITY'S NEEDS AND DIRECTING DISPOSAL OF SAME.

WHEREAS, the city of Anytown has identified various items of city-owned property as being surplus to the needs of the city and has determined it to be in the public interest to offer them for sale.

NOW, THEREFORE, BE IT RESOLVED BY THE ANYTOWN BOARD, AS FOLLOWS:

1. **Property declared surplus to the needs of the city government.** The following described vehicle is hereby declared to be of low value and surplus to the needs of the city.

ITEM	DESCRIPTION	SERIAL NUMBER/VIN
2003 Ford F-150 Pickup Truck	Color: White Mileage: 195,247	OU813-711
Public Address Amplifier	Peavey Model CS 4080HZ Age: 7 years	XYZ87602281
35mm Camera	Olympus 35SP — Rangefinder 35 years old	SP-1000879
Work Bench Vise	Wilmar Model MV4 4 inch, black	None

2. **City Manager directed to dispose of surplus property.** In compliance with the Anytown Surplus Property Policy (Resolution #2012-109), the City Manager is hereby directed to conduct a public auction for the sale of the surplus items enumerated in Section 1 of this Resolution. If said auction does not result in an acceptable bid, the City Manager is authorized to donate any unsold items of surplus property to any charitable cause, with preference given to those charities located, or having a presence, in Anytown. In the event no charitable cause can be found for such purposes, the City Manager may give the surplus property to any non-profit organization or, at his option, have the items disposed as solid waste.

PASSED AND APPROVED THIS _____ DAY OF _____, 2012
BY A ROLL CALL VOTE OF THE ANYTOWN BOARD OF MAYOR AND ALDERMEN.

THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

SURPLUS PROPERTY NOMINATION FORM
CITY OF ANYTOWN, TENNESSEE

DEPARTMENT: _____

The following items are hereby nominated for designation as surplus city property pursuant to

City Resolution No. _____:

Item: _____

Description: _____

Serial Number: _____

Age: _____

Purchase price: _____ Estimated Current Value: _____

Reasons for making the nomination: _____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Signature Date

THE UNIVERSITY of TENNESSEE

MUNICIPAL TECHNICAL ADVISORY SERVICE

August 24, 2012

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MUNICIPAL TECHNICAL ADVISORY SERVICE

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