

ORDINANCE NO. 19-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA, ESTABLISHING PROCEDURES FOR THE DISPOSITION OF COUNTY OWNED REAL PROPERTY; ESTABLISHING PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY; PROVIDING FOR INCLUSION INTO THE OKALOOSA COUNTY CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Okaloosa County Board of County Commissioners (“Board”) is authorized to exercise governmental powers pursuant to Article VIII of the Florida Constitution and Section 125.01, Florida Statutes; and

WHEREAS, Florida Statutes authorizes Okaloosa County to acquire and sell any real or personal property and to lease real property whenever the Board determines that it is in the best interest of the County to do so; and

WHEREAS, Section 125.35, Florida Statutes, provides set bidding and notice requirements for the sale or lease of county real and personal property, but authorizes the County to prescribe alternative disposition standards so long as those standards (i) contain competition and qualification requirements; (ii) provide for reasonable public notice; (iii) identify the form and manner by which interested persons may acquire county property; (iv) provide for types of selection procedures applicable to disposition of county property; (v) specify the manner in which interested persons will be informed of the intended action; and (vi) otherwise adhere to the County’s comprehensive plan and zoning ordinances; and

WHEREAS, Section 125.355, Florida Statutes, allows the County to acquire real property for a public purpose and to adopt procedures for the purchase of real property; and

WHEREAS, the Board finds that the ability to utilize flexible acquisition and disposition procedures allow the County the ability to utilize the most advantageous approaches as the circumstances may require; and

WHEREAS, the Board hereby finds that it is in the best interest of the citizens of Okaloosa County to enact an ordinance setting for alternative procedures for the acquisition and disposition of real property.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS. The above recitals are true and correct and hereby incorporated herein by reference.

SECTION 2. Chapter 18, Article I of the Code of Okaloosa County is hereby created.

Article I – General Provisions

Section 18-01 – Definitions.

- (A) *Surplus Property* means real property that is owned by the County which is unusable or no longer needed for County purposes or otherwise usable for affordable housing purposes. The County Administrator or designee shall periodically review all real property held by the County as frequently as is needed to determine whether such property is constitutes surplus property.
- (B) *Acquisition* means the conveyance of real estate to the County from others under the authority contained herein. In any such acquisition, upon the acceptance and recordation of the deed, easement instrument, certificate of title, order of taking, or other such document that conveys such real estate to the County, the Acquisition shall be deemed accepted by the County.
- (C) *Acquisition Under Threat of Eminent Domain* means an acquisition of real estate that has been identified by the Board as being necessary to the completion of a project, regardless of an owner’s unwillingness to sell.
- (D) *Acquisition By Exercise of Eminent Domain* means an acquisition of real estate under the Board’s exercise of its eminent domain power with the commencement of a lawsuit in those instances when the pre-suit negotiations for an acquisition under threat of eminent domain are unsuccessful, provided, however, that in accordance with Section 127.02, Florida Statutes, as may be amended from time to time, such exercise of eminent domain shall not proceed unless the Board adopts a resolution authorizing such acquisition.
- (E) *License* means a grant of permission authorizing the licensee to do a particular act on a parcel of County-owned real estate. As distinguished from a lease, a license merely grants permission to use such real estate and does not convey any property. Such license cannot be assigned by the licensee and is revocable by the County at will.
- (F) *Real Estate* means any and all real property interests or rights in land, and the improvements attached thereto. Such real property interests and rights may include, but are not limited to, fee simple interests, temporary or permanent easement interests, or leasehold interests. The term real estate, however, does not include the right of temporary occupancy or use of real property pursuant to a License or grant of right-of-entry.

Article II - REAL PROPERTY DISPOSITION PROCEDURES.

Section 18-02 - Purpose. This Ordinance is adopted for the purpose of establishing alternative procedures for the disposition of County real property. The provisions contained herein are supplemental to the statutory methods available to the County under Florida law. The County Administrator or designee shall have the option of utilizing the statutory methods of disposal, the procedures set forth in this Ordinance, or any combination thereof.

Section 18-03 - Authority, Purpose, and Standards.

- (A) This section is enacted under authority of section 125.35, Florida Statutes, for sale, leasing and donation of real property when it is determined by the Board to be in the best interest of the County.
- (B) Any of the procedures specified in this article may be used and applied, when applicable, by the Board for the competitive or non-competitive sale or lease of any real property.
- (C) At a minimum, persons or legal entities seeking to purchase or lease available County real property must be financially responsible and currently active, registered and in good standing with the Florida Department of State. Other standards for competition and qualification for the sale or lease of County real property are set forth below.

Section 18-04 - Declaration of Surplus Property.

- (A) When the Board finds that any real property owned by the County is unusable or not needed for County purposes or usable for affordable housing the Board may declare the real property to be surplus property. Once the property is declared surplus, the property may be sold, dedicated, donated, leased or otherwise conveyed to interested parties in accordance with applicable Florida Statutes or pursuant to the terms of this Ordinance.
- (B) Any real property owned by the County may be declared as surplus upon:
 - (1) By the Board upon the recommendation of the County Administrator or designee, or
 - (2) The request of an interested party. Such request shall be made to the County Administrator or designee who shall provide a recommendation to the Board as to whether the property should be declared surplus property, or
 - (3) The Board may declare property surplus on its own initiative.

Section 18-05 - Methods of Disposal. Once the real property has been declared surplus, the County Administrator or designee shall recommend to the Board a particular method of disposal as set forth in this section.

- (A) **Statutory Competitive bidding.** In accordance with Section 125.35(1), Florida Statutes, the County may sell, convey or lease any real property, whenever the Board determines that is in the best interest of the County to do so, to the highest and best bidder for the particular use of the property the Board determines is the highest and best pursuant to the statutory procedures provided in Section 125.35(1), Florida Statutes. Notice shall be published on the County website for at least two weeks calling for bids on the property. Bids on the property shall be received by the Purchasing Department at the specified date and time on the notice.
- (B) **Private Sale.** In accordance with Section 125.35(1), Florida Statutes, the County may negotiate a private sale with an adjacent property owner when the Board finds that the property is of insufficient size and shape to be issued a permit for any type of development, or when the value of the property is \$15,000.00 or less as determined by an independent appraisal or by the County Property Appraiser and of use only to the adjacent property owner(s). Notice of intended action shall be sent to the adjacent property owners by certified mail and no bids or public notice shall be required. However, if within ten days, two or more adjacent property owners indicate an interest to purchase the property, then the County Administrator or designee shall accept sealed bids for the parcel from those property owners and may convey the property to the highest bidder or reject all bids. If no response is received from the adjacent property owners, then a private sale may be completed.
- (C) **Property Exchange.** In accordance with Section 125.37, Florida Statutes, the County may exchange surplus real property for another parcel of real property, provided that the Board has published a notice for at least two weeks in a newspaper of general circulation, before adoption of a Resolution authorizing the exchange. The notice shall set forth the terms and conditions of the exchange of property.
- (D) **Sale to Government or Non-Profit.** In accordance with Section 125.38, Florida Statutes, upon a finding by the Board that the property is required for use by another governmental entity or non-profit entity, the County may sell, transfer, lease or convey real property to that entity for such price, whether nominal or otherwise as the Board may determine. No advertisement is required. The fact of the application being made, the purpose for which such property is to be used, and the price or rent thereof shall be set out in a Resolution duly adopted by the Board, setting forth the following:

- (1) The facts of the application;
 - (2) The purpose for which the property is to be used;
 - (3) The rent and term of the lease or the purchase price and terms; and
 - (4) A provision to be incorporated into the lease or deed which states that in the event the property is no longer used or ceases to be used for the stated purpose, the lease term shall immediately cease, or in the case of a purchase, the property shall revert to the County which shall thereafter have the right to re-enter and repossess the property. Any improvements made to or on the real property shall also become property of the County with no compensation due to the other party.
- (E) **Affordable Housing.** In accordance with Section 125.379, Florida Statutes, the County may sell, transfer, lease, or convey surplus real property to another governmental entity, a non-profit entity, or a private entity or person to carry out the provisions of Chapter 420, Florida Statutes relating to affordable housing. The County may adopt requirements for such conveyances on a case-by-case basis and may include deed restrictions, percentage of affordable units for low-income, moderate-income, and very low-income persons as defined in Section 420.0004, Florida Statutes, and such other restrictions to ensure that said property will be permanently preserved as affordable housing.
- (F) **License Agreements.** In those circumstances that private structures encroach upon County rights-of-way, the County may enter into a license agreement which would allow such private structure to remain within the rights-of-way. Such License Agreement shall be approved by the Board and shall contain at a minimum the following provisions and requirements:
- (1) That the County rights-of-way is not currently being used or that a temporary intrusion on the rights-of-way would not impact or affect the public uses of the rights-of-way; and
 - (2) That the removal of the structure at this time, would constitute a hardship upon the private property owner; and
 - (3) The private property owner agrees to not expand the rights-of-way and to remove the private structure from the County's rights-of-way within thirty (30) days of notification by the County; and
 - (4) The private property owners agree to be responsible for all of the costs of the removal of the private structure and any costs incurred by the County.

- (G) **Easements on Public Property.** Easements on public property that are granted to private parties may only be given under such circumstances that failure to do so may result in loss or significant damage to property or result in adverse impacts to the property for which there are limited alternatives available to mitigate those adverse impacts other than by encumbering public land. Easements granted to private parties on public property may only be granted by the Board and shall include such terms as determined to be necessary.

Section 18-06 - Alternative disposition procedures. As authorized in Section 125.35(3), Florida Statutes, the County may dispose of surplus real property through alternative procedures outlined herein:

- (A) **Minimum base bid.** The County may sell, transfer, lease or convey real property through the minimum base bid procedures outlined herein.
- (1). A minimum base bid for the lease or sale of real property may be determined by:
 - a. A written offer procured by a real estate broker; or
 - b. An appraisal; or
 - c. An unsolicited written offer made by a prospective lessee or purchaser; or
 - d. Utilizing the property appraiser value.
 - (2). After determining the minimum base bid, the County may elect to advertise for bids on the property which is the subject matter of the written offer. The election to advertise for bids must be brought up as a regular agenda item at a duly noticed regular public meeting of the Board of County Commissioners at which members of the public are afforded the opportunity to comment on the proposed sale or lease. The advertisement shall specify the minimum base bid and the specific terms and conditions, if any, to be bid upon. All bids shall be sealed and must contain a minimum of one percent or \$150.00, whichever amount is greater, as an earnest money deposit.
 - (3). Upon receipt of the sealed bids, the property shall be sold or leased to the bidder submitting the highest, qualified, responsive and best bid. The offer of the prospective purchaser used to establish the minimum base bid, shall be deemed to constitute the bid of the lessee/purchaser unless a second sealed bid is submitted by the prospective lessee/purchaser. The Board reserves the right to reject any bid, including the minimum base bid, that is not reasonably close to the fair market value of the property at the time bids are opened.
 - (4). If no other bids are received or if no bid exceeds the minimum base bid, the offer used as the minimum base bid shall be accepted by the County only if such minimum base bid is reasonably close to the fair market value of the property. If other bids are received, and at least one such bid is reasonably close to the fair market value of the property, the sale or lease shall be made to the highest and best bidder.

- (B) **Negotiated sale.** The County may sell, transfer, lease or convey real property through the negotiated sale procedures through the use of a licensed real estate broker or through a public auction house in the following manner:
- (1) A licensed real estate broker or public auction house (including internet auction companies) shall be retained in accordance with County' Purchasing Policy to market, lease, or auction the real property. Any contract for services shall, at a minimum, set forth the amount of compensation due for services, the length of notice/advertising time, the time for auction, if being auctioned, and such other information as deemed necessary by the County Administrator or designee.
 - (2) Any offer made to a licensed real estate broker for sale of listed surplus property shall be brought to the Board, or the County Administrator as appropriate, in the form of a purchase agreement procured in accordance with the County's Purchasing Policy. If the Board or the County Administrator as appropriate, approves the purchase agreement, then the Chairman, or County Administrator as appropriate, shall be authorized to sign all required closing documents, including the deed.
 - (3) For any real property dispositions made through public auction, the county shall establish a base reserve for the property.
- (C) **Request for proposals.** The County may sell, transfer, lease or convey real property through the request for proposals (RFP) process in the following manner:
- (1) The election to use the RFP process must be brought up as a regular agenda item at a duly noticed regular public meeting of the Board at which members of the public are afforded the opportunity to comment on the proposed sale or lease.
 - (2) Upon approval by the Board, the Purchasing Manager or designee shall proceed to issue the RFP, evaluate the proposals, and submit a recommendation regarding such proposals to the Board.
 - (3) If the sale or lease of the property was initiated in response to an unsolicited offer by a prospective purchaser, then the offeror may submit another proposal. If no other proposal is received, the original proposal shall be accepted, unless the original offer was deemed unacceptable and rejected before issuing the RFP. The County reserves the right to reject any RFP in which the proposed sale or lease amount is not reasonably close to the fair market value of the property at the time RFPs are considered by the Board.

Section 18-07 - Negotiation procedures.

- (A) In determining the terms and conditions of the disposal of surplus property, the County administrator or designee may take into consideration the following factors:
- (1) The appraised value of the real property;
 - (2) The condition of the real property, and the extent to which the party seeking to acquire the property will have to expend funds to make the property usable, rezoning issues excluded, or, to bring the property into compliance with the County Code;

- (3) The proposed use of the party seeking to acquire the property; and
 - (4) The proposed use of the property for affordable housing.
- (B) In no event shall the disposition of surplus property violate the county comprehensive plan or the zoning regulations of the county.

Section 18-08 -Exemptions

- (A) Notwithstanding anything in this article to the contrary, the County is expressly authorized to:
- (1) Negotiate the lease of an airport or seaport facility;
 - (2) Modify or extend an existing lease of real property for an additional term not to exceed 25 years; or
 - (3) Lease a professional sports franchise facility financed by revenues received pursuant to Sections 125.0104 or 212.20, Florida Statutes.

Section 18-09 to 18-20 Reserved.

SECTION 3. Chapter 18, Article III of the Code of Okaloosa County is hereby created.

ARTICLE III – Acquisition of Real Property

Section 18-21 – Appraisals and Other County Estimates.

- (A) Except as otherwise set forth herein, prior to the acquisition of real property, regardless of the interest in the property sought to be acquired, an appraisal shall be prepared by a qualified appraiser. To the extent that the County utilizes the acquisition procedures set forth in section 125.355, Florida Statutes and seeks to maintain the confidentiality of the records procedures, then the County shall obtain an appraisal for each purchase in an amount of not more than \$500,000. For each purchase in an amount in excess of \$500,000, then two appraisals shall be obtained pursuant to section 253.025, Florida Statutes.
- (B) For the acquisition by the County of an interest in property whether in fee simple or an easement, for which the value of the property sought to be obtained is reasonably projected to be less than \$10,000, the Director of the Department seeking to acquire the property, or his designee, may acquire the interest in the property for the County without the necessity of an appraisal by a qualified appraiser under the following circumstances:
- (1) The property or interest in property sought to be acquired shall be for rights-of-way, easement or such other public purpose; and

- (2) The property or interest in the property sought to be acquired shall be in a total amount of less than \$10,000; and
- (3) The Department Director or his designee has compared the proposed price for the acquisition of the property or the interest in the property to the fair market value paid for similar and relevant type properties and that the proposed price for the acquisition is consistent with fair market value paid for the comparative property.
- (4) The proposed acquisition of the property or the interest in the property without the necessity of an appraisal shall be approved by the County Administrator or his designee.
- (C) All other property or interest in property acquired by the County shall have an appraisal supporting the proposed price for the acquisition of the interest Property to be acquired.

Section 18-22 – Authority to Acquire Real Estate.

- (A) The County Administrator, with the written concurrence of the County Attorney, may acquire real property on behalf of the County, including any easements, for which the purchase price of the real property is less than \$50,000. The County Administrator shall have the authority to execute any documents necessary to acquire such property without further approval of the Board.
- (B) Any acquisitions of real property by the County, including any easements, for which the purchase price for the property is \$50,000 or more, shall be approved by the Board of County Commissioners.
- (C) For the acquisition of all real property or interest in real property, the County shall have a title search prepared to assure that there are no encumbrances and that title may properly pass to the County upon execution. In the event of an emergency circumstance, the County Administrator, with the concurrence of the County Attorney, may approve the acquisition of an easement without the necessity of a title search. Title insurance shall be acquired for such acquisitions as determined by the County Attorney and County Administrator.

Section 18-23 – Acquisition of Real Property by Eminent Domain.

- (A) In the acquisition of real property by eminent domain or under the threat of eminent domain, the provisions of Florida Law, as modified herein, shall govern that process.

- (B) The County may adopt special provisions for the identification, negotiation and acquisition of real property eminent domain or under the threat of eminent domain. Such special provisions may be adopted by resolution.

SECTION 4. INCLUSION INTO THE OKALOOSA COUNTY CODE OF ORDINANCES.

It is the intent of the Board that the provisions of this Ordinance shall become and be made part of the Okaloosa County Code of Ordinances and that the sections of this Ordinance may be renumbered or re-lettered.

SECTION 5. SEVERABILITY. Should any section or provision of this Ordinance or any portion thereof, or any paragraph, sentence, or word be declared by a court or competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof other than the part declared to be invalid.

SECTION 6. EFFECTIVE DATE. This ordinance shall take effect as provided by law.

PASSED AND DULY ADOPTED this _____day of _____, 2019.

OKALOOSA COUNTY BOARD OF
COUNTY COMMISSIONERS:

Charles K. Windes, Jr., Chairman

ATTEST:

J.D. Peacock II, Clerk

APPROVED AS TO FORM:

Gregory T. Stewart, County Attorney