

Conveyance of Real Property by Cities

Presented by Robert C. Lockward
Deputy Boise City Attorney



When you think of city-owned property, what properties come to mind?

“ The city council shall have the power to sell, exchange or convey, by good and sufficient deed or other appropriate instrument in writing, any real property owned by the city which is underutilized or which is not used for public purposes. ”

Idaho Code Section 50-1401 (emphasis added).

The requirement that the property be **“underutilized or not used for public purposes”** is a threshold question to be considered by the city council seeking to divest itself of real property.

Boise City Code also restricts conveyance of property acquired or maintained by Land and Water Conservation Funds from the Idaho Department of Parks and Recreation. A City must obtain written permission from the Idaho Department of Parks and Recreation prior to any conveyance.

Boise City Code Title 9, Chapter 23.

“ The mayor and council may, by resolution, authorize the lease of any real or personal property not otherwise needed for city purposes, upon such terms as the city council determines may be just and equitable. ”

Idaho Code Section 50-1407.



Many properties are acquired or maintained with grant funding from one or more federal agencies.

A city contemplating a sale or exchange of property must determine the funding source used to acquire that property.

Declaration of Value of Property

Declaration of value is the first step to be undertaken before any city owned property may be conveyed, exchanged, or sold. Idaho Code Section 50-1402 governs this process.



Idaho Code Section 50-1402 requires the city council, on the record at a public meeting, to declare either a “minimum dollar value, or an explanation of an intended exchange or conveyance for other than monetary consideration[.]”

Note that Idaho Code allows, but does not require an appraisal. Moreover, the city council may declare “that the property will be offered for sale without establishing a minimum price.” Idaho Code Section 50-1402.

Once the city council declares its intent to convey the property and has declared a minimum value for the property, the city clerk must publish a summary of the action taken, together with a public hearing notice, at least fourteen days prior to the date of the public hearing.

Title 50, Chapter 14 does not provide any guidance as to how the public hearing should be conducted.

Following approval at a public hearing, the city council may take the following actions:

Auction

If the property is offered for sale, then the property shall be sold at auction to the highest bidder.

Exchange

May be conveyed to a private entity for property of equivalent value. The terms of any such arrangement shall be public record.

Transfer

The city may transfer the subject property to any tax supported governmental unit, with or without consideration.



Reserve Street Armory

Property Exchange



Hammer Flat

Intergovernmental Exchange

Property acquired with federal funding for use as affordable housing.

Idaho Code Section 50-1403(3) allows for the sale, conveyance, or donation of such property directly to a low to moderate-income family provided that the conveyance is “consistent with the applicable federal regulations under which the applicable federal regulations under which the property was obtain initially.”

Prior to conveyance, the city must pass an ordinance stating that the property was purchased with federal funding, that the recipient qualifies as a low to moderate-income family, and that the sale complies with all federal, state, and local laws, regulations, and policies.

SECURITY!

“When it is determined by the city council to be in the city’s best interest, the city may transfer property to a trustee for security purposes, or for purposes of accommodating a transaction, or for funding of construction of capital facilities on city owned property.” Idaho Code Section 50-1403(5)



Terms of Sale

- May be sold for cash.
- If sold under contract, however:
 - (1) The total term of contract, including extensions, may not exceed ten years.
 - (2) The rate of interest on all deferred payments shall be set by the city council.
 - (3) Title shall be retained by the city until full payment has been made by the purchaser.

“ Any property sold by the city council under the provisions of this section either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held record of title to the property so sold. ”

Idaho Code Section 50-1404

In other words, during the term of the contract to purchase city-owned real property, the purchaser pays taxes on the property despite technical governmental ownership.

Breach of Contract by Purchaser

Idaho Code Section 50-1404 provides that “[t]he city council shall have authority to cancel any contract of sale pursuant to law, and retain all payments paid thereon, if the purchaser shall fail to comply with any of the terms of the contract.”

Litigation?





Shared streets and alleyways may be vacated through Idaho Code Sections 50-311 and 50-1321.

Title 50, Chapter 14 of Idaho Code may not be used as an alternate means of divesting a city of real property that has been used as a shared street or alleyway. *Infanger v. Salmon*, 137 Idaho 45, 44 P.3d 1100 (2002).



Sporting events on city-owned property.
May the city lease park space for such activities?

Absolutely.

Idaho Code Section 50-1409 expressly allows such leases upon a vote of one half plus one of the members of the city council.





THANK YOU!



Rob Lockward - rlockward@cityofboise