



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 220322-A
(As Amended on Floor 6/23/2022)

Introduced April 7, 2022

Councilmembers Gauthier, Green and Brooks

**Referred to the
Committee on Public Property and Public Works**

AN ORDINANCE

Amending Chapter 16-400 of The Philadelphia Code, entitled "Surplus Properties," by adding criteria for evaluating non-competitive dispositions, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 16-400 of The Philadelphia Code is amended to read as follows:

TITLE 16. PUBLIC PROPERTY

* * *

CHAPTER 16-400. SURPLUS PROPERTIES

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§ 16-402. Definitions.

(1) In this Chapter the following definitions shall apply:

* * *

(f) *Community Trust.* An organization, subsidiary, or partnership that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, a majority of whose founders, board officers, management and resources are independent of any for-profit corporation or funder, and whose bylaws or other documentation submitted at time of application indicate that the organization or partnership of organizations:

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(.1) *Acquires parcels of land and holds them in perpetuity with an intent to never resell, under alternative ownership structures like community land trusts, community investment trusts, and neighborhood trusts;*

(.2) *Ensures the permanent affordability of any structural improvements located on its land;*

(.3) *Serves community constituents who are defined by specific demographic characteristics or inclusive of all individuals who live, work, or worship in the geographic area served by the organization;*

(.4) *Has a governing body that is at least 51% composed of the organization's constituents, as defined in subsection 16-402(1)(f)(.3), and stewards, occupants, and residents of the organization's land holdings.*

(.5) *Has obtained required certificates of insurance and demonstrated financial capacity to maintain the land it intends to lease;*

(.6) *Demonstrates prior experience in implementing projects of similar scope and target demographic;*

(.7) *Has a documented succession plan that outlines how land will be transferred and project maintained in the event of default or dissolution; and*

(.8) *Submits a proposal that achieves permanent affordability, community control, and aligns with either an Adopted Neighborhood Plan or a Neighborhood Plan conducted by a non-profit that serves the community where the City surplus property is located.*

(h) Permanent Affordability. The continuous preservation of housing or other structural improvements, pursuant to restrictions of a City or Agency contract, financing agreement, funder or lender restriction, indenture, or covenant, or ground lease, at a sales price or rent that remains affordable to the same economic class of households as that of the initial purchaser or renter over a period spanning the useful life of the structure, and in no case for fewer than ninety-nine (99) years. Disposition applications will be considered to achieve permanent affordability if more than fifty percent (50%) of the residential rental units developed in such projects are occupied, at the time of the each initial and subsequent lease, by households whose income is at or below 50% of AMI; or more than fifty percent (50%) of the homeownership units developed in such project are occupied, at the time of the each initial and subsequent sale, by households whose income does not exceed 80% of AMI.

(i) Community Garden. A parcel of land managed and maintained by a group of individuals for neighborhood residents to share in the products of the land, which may include but not be limited to affordable food, accessible play areas, and open community space.

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(j) *Community Control.* A system of land ownership and decision-making in which property residents, occupants, stewards, and in some cases other community constituents as defined in 16-402(1)(f)(.3), participate in and benefit from ownership, stewardship, and governance of property within a given neighborhood.

(k) *Adopted Neighborhood Plan.* A plan that has been adopted by the City Planning Commission, including but not limited to Comprehensive Plans and/or Redevelopment Area Plans.

(l) *Area Median Income or AMI.* The median income for the Philadelphia area adjusted for household size as calculated by the U. S. Department of Housing and Urban Development.

(m) *Affordable.* Having total monthly costs for occupants of the property that do not exceed thirty percent (30%) of household income, as measured by AMI; for homeownership projects, monthly costs shall include mortgage principal and interest, mortgage insurance, property taxes, homeowner's insurance, and condominium or homeowner association fees applicable and owing; for residential rental projects, monthly costs shall include the monthly rent amount and a reasonable allowance, adjusted for household size, for utilities that are not included in the rent amount.

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§ 16-404. Disposition: Inventory, Methods, Terms, and Approvals.

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(2) Methods.

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(d) Disposition without Competitive Process *in the 3rd, 4th, and 6th Council Districts.*

* * *

(.1) *In the 3rd, 4th, and 6th Council Districts, an [An] Agency may dispose of surplus properties to a qualified applicant without following the process set forth in subsection 16-404(2)(c) in any one of the following circumstances:*

(.2) Applications for non-competitive dispositions shall be evaluated for financial and operational capacity to complete the proposed project and other considerations, in accordance with the Disposition Policy.

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(.a) Applications pursuant to a non-competitive process involving residential or commercial development, or business expansion shall be evaluated based upon the following weighted criteria:

(.1) thirty percent (30%) for economic opportunity and inclusion and community control;

(.2) fifteen percent (15%) for public purpose - social impact and community control;

(.3) twenty percent (20%) for development team experience and capacity;

(.4) twenty percent (20%) for financial feasibility of the proposed project, provided that for applications submitted by a community trust for a lease, financial feasibility will be scored solely based on the ability to maintain the requested properties and provide required insurance;

(.5) ten percent (10%) for project design; and

(.6) five percent (5%) for offer price, provided that for applications proposing residential housing development in which fifty percent (50%) or more of the residential housing units will remain permanently affordable units at fifty percent (50%) of AMI and below for rental units and at eighty percent (80%) of AMI and below for homeownership units, full points will be awarded for the offer price criterion.

(.b) Applications pursuant to a non-competitive process for creating a new community garden or open space is eligible for a Lease Agreement if the applicant is a Qualified Applicant.

(.c) The Qualified Applicant may be brought in for an oral presentation before evaluation is completed.

(.3) Upon receipt of an application for the disposition of a surplus property pursuant to this subsection 16-404(2)(d), the Agency shall accept applications from other applicants for such property for a period of sixty (60) days from the date the first application was received. Following the close of the sixty (60)-day period, all complete applications received for a property shall be evaluated in accordance with subsection 16-404(2)(a). Each applicant deemed qualified pursuant to subsection 16-404(2)(a) shall have its application evaluated pursuant to subsection 16-404(2)(d)(.2):

(.a) If more than one applicant is qualified under subsection 16-404(2)(d)(.2), and one of those qualified applicants is a Community Trust, the Community Trust

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applicant shall be selected, and the Community Trust shall be notified pursuant to subsection 16-404(2)(d)(.4).

(.b) If more than one applicant is qualified under subsection 16-404(2)(d)(.2), none of those qualified applicants is a Community Trust, and the first application received is qualified, the first application received shall be selected for the properties requested by the applicant, and the applicant shall be notified pursuant to subsection 16-404(2)(d)(.4).

(.c) If more than one applicant is qualified under subsection 16-404(2)(d)(.2), and none of the qualified applicants is either a Community Trust or the first applicant, the Agency may select the application deemed most qualified under subsection 16-404(2)(d)(.2), and the applicant shall be notified pursuant to subsection 16-404(2)(d)(.4).

(.4) Within 120 days of receiving [a completed] the first application for the disposition of a surplus property pursuant to this subsection 16-404(2)(d), the Agency shall advise [the applicant] the selected applicant in writing [whether] that the Agency will [offer the property to the applicant] recommend such property to the Agency's board for disposition to the selected applicant and shall notify all other applicants of the rejection of their applications.

[(.4)] (.5) If the applicant's proposal has been deemed suitable to recommend for approval, the Agency shall provide [the] that applicant with a purchase or lease agreement that [includes] is [a] valid for no less than one year (subject to extension by the Agency) from the time of delivery of an executed agreement by the applicant. [Such purchase] The agreement shall include such restrictions in connection with the purchase [agreement] and development of the property and transfer of title or the lease and use of the property as deemed appropriate by the Agency and as required by the Disposition Policy and this Chapter.

(.6) Notwithstanding the language in 16-404(2)(d)(.3), the Agency may select an applicant pursuant to this subsection 16-404(2)(d)(.2) to the fullest extent permitted by law, or it may choose not to select any applicant.

(e) Disposition without Competitive Process in the 1st, 2nd, 5th, 7th, 8th, 9th and 10th Council Districts.

(.1) In the 1st, 2nd, 5th, 7th, 8th, 9th, and 10th Council Districts and in accordance with the requirements of subsection 16-402(2)(e), an Agency may dispose of surplus properties to a qualified applicant without following the process set forth in subsection 16-404(2)(c) in any of the circumstances set forth in subsections 16-404(2)(d)(.1).

(.2) Applications for non-competitive dispositions shall be evaluated for financial and operational capacity to complete the proposed project, and other considerations, in accordance with the Disposition Policy.

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(.3) *Within 120 days of receiving a completed application for the disposition of a surplus property pursuant to this subsection 16-404(2)(e), the Agency shall advise the applicant in writing whether the Agency will offer the property to the applicant.*

(.4) *If the applicant's proposal has been deemed suitable to recommend for approval, the Agency shall provide that applicant with a purchase agreement that is valid for no less than one year (subject to extension by the Agency) from the time of delivery of an executed agreement by the applicant. Such purchase agreement shall include such restrictions in connection with the purchase agreement and transfer of title as deemed appropriate by the Agency and as required by the Disposition Policy and this Chapter.*

(3) Terms. * * *

(f) An Agency shall require an agreement for all dispositions of surplus properties.

(.1) For dispositions by the Redevelopment Authority, the agreement shall be a redevelopment contract in accordance with the Urban Redevelopment Law and Chapter 16-600.

(.2) For dispositions by any other Agency, the agreement shall include the provisions required by subsections 16-601(1)(a) through 16-601(1)(e), except that all references in such provisions to the Redevelopment Authority shall be considered as references to the Agency.

(.a) *For dispositions to community trusts pursuant to subsection 16-404(2)(d), the agreement may be a Lease Agreement, subject to compliance with such terms and conditions as the Agency deems necessary to evaluate the entity's financial and operational capacity to purchase, develop and maintain the property in perpetuity in accordance with its development plan and such other requirements as the Agency may impose. A Lease Agreement pursuant to this Section shall include an initial lease term of at least one (1) year but no more than five (5) years, at the expiration of which possession of the property shall revert to the possession by the City of Philadelphia or the Agency, automatically, if the Agency does not transfer title of the property to the community trust. The Lease Agreement shall stipulate that the property is to remain as open space, with construction prohibited from occurring on the land, and that any use other than open space will require an amendment to the Lease Agreement. The Agency may transfer title of the property at or before the expiration of the lease term, but no earlier than a year after execution of the lease, provided the community trust has demonstrated satisfaction of the agreement requirements and submitted a complete land development application, which may include but are not limited to:*

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(i) *Payment in full of any nominal rent owed to the City during the lease term;*

(ii) *Effective financial stewardship of the community trust and the surplus property, as evidenced by audited financial statements, annual reports or other documentation demonstrating the staff and financial capacity to implement this project concurrently with any other comparable pending projects;*

(iii) *Effective physical stewardship of the property during the lease term, as evidenced by visual evidence that no construction took place onsite during the lease term and the site is clear of significant debris;*

(iv) *Substantial progress on the proposed development project and capacity to timely complete the project as approved by the Agency;*

(v) *Cost and proof of funds to complete the project, akin to the type of documentation that would otherwise be required for a full disposition;*

(vi) *Proof of insurance on the surplus property;*

(vii) *Commitment to adhere to deed restrictions preventing resale of the property; and*

(viii) *Bylaws provisions or other legally binding document ensuring land transfer to a nonprofit organization obligated to honor the use and affordability restrictions between the community trust and its lessees upon dissolution of the organization.*

(.b) The Agency has the authority to grant a lease extension of one year or less upon determination that the applicant can demonstrate substantial progress on project financing.

(4) Approvals

(a) An Agency shall not dispose of, or lease for more than one year, a surplus property, without approval of the disposition by resolution of the Board of Directors of the Agency, and approval by a resolution or ordinance of City Council. A summary of the lease or disposition terms shall be provided for inclusion with the Council approval resolution or ordinance. Such approvals may not be given until at least ten (10) days after public notice has been provided as required by subsection (b), *and not unless the selected applicant has held at least one community meeting with notice provided to those Registered Community Organizations as defined in subsection 14-303(11A) whose registered area of concern contains one or more of the properties included in the application. If there is more than one RCO whose registered*

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boundaries include the requested property, the district councilmember whose district includes the requested property shall select one of those RCOs as the Coordinating RCO, or may select two or more RCOs whose registered boundaries include the requested property to serve jointly as the Coordinating RCO. The selection of coordinating RCO(s) shall not be duly withheld and shall be selected in a timely manner. It is the responsibility of the applicant to contact the Coordinating RCO once assigned to schedule the community meeting. Evidence of the community meeting, including notice of the meeting, certificate of mailing, meeting agenda and letter summarizing the meeting discussion, must be submitted to the Agency before the application will be placed on the Agency's board meeting agenda. The Agency has the right to reject the application if evidence of this RCO meeting is not provided within 60 days of the RCO meeting taking place.

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SECTION 2. Effective date. This Ordinance shall take effect immediately.