



King County

**Metropolitan King County Council
Charter Review Commission**

REQUEST FOR CONSIDERATION OF CHARTER AMENDMENT

Agenda Item:		Name:	Regional Coordination SubComm
Proposed No.:		Date:	April 16, 2019

PROPOSED CHARTER AMENDMENT

The Regional Coordination Sub-Committee proposes a Charter Amendment to remove the limitation on the sale of surplus land for affordable housing at less than fair market value. This amendment would make the Charter consistent with state law.

BACKGROUND

The County provides many different services, and one of these service categories includes “Metropolitan Functions” (Metro), defined by state law to include matters such as water pollution abatement, public transportation and parks. There are constitutional, statutory and contractual restrictions on the disposal of properties acquired for these Metro uses. Transfer must either be for its Metro use or at fair market value. In addition to the restrictions from these sources, Charter section 230.10.10 likewise effectively prohibits the County from disposing of Metro property for any purpose other than what was originally intended at less than fair market value.

In 2018, the State Legislature passed 3SHB 2382 that authorized the disposition of governmental assets for less than fair market value in certain circumstances like affordable housing. While this enactment would remove one of the statutory impediments to selling county property at less than fair market value, other significant statutory and constitutional and contractual restrictions still exist for a sale of Metro property.

SUMMARY

Currently, Section 230.10.10 of the Charter reads as follows:

230.10.10 Metropolitan Municipal Functions. Each metropolitan municipal function authorized to be performed by the county pursuant to RCW ch. 35.58 shall be operated as a distinct functional unit. Revenues or property received for such functions shall never be used for any purposes other than the operating expenses thereof, interest on and redemption of the outstanding debt thereof, capital improvements, and the reduction of rates and charges for such functions.

This language effectively prohibits property owned by one of the Metro funds from being used or disposed of for any other purpose than originally intended unless fair market value is received. To address this prohibition the Regional Coordination Sub-Committee requests the full Commission support a Charter Amendment adding the following language to Section 230.10.10 of the County Charter:

To the extent not otherwise prohibited by law, this section shall not preclude the county from leasing, selling or conveying such properties at less than fair market value for affordable housing purposes.

This language would remove the County Charter limitation on the disposal of Metro property at less than fair market value for affordable housing.

ANALYSIS

King County is a major holder of real estate throughout the County. Much of that land is in obvious current use for government functions, parks, open space or one of the other various county uses. The continued use of these properties would not be affected by the potential charter amendment or the previous change in state law.

There is a process in King County Code 4.56 whereby agencies can identify property as surplus to the current or planned needs of an agency. These surplus properties sometimes end up being sold on the open market and might be usable for affordable housing. However, a sale of Metro properties has historically required payment of its fair value, and that often makes use of such parcels for affordable housing difficult to accomplish.

The proposed language would eliminate only the County Charter limitation on disposing of Metro parcels for less than fair value when the parcels are used for affordable housing rather than their original Metro function. Other constitutional, statutory and contractual impediments to such sales would remain. For example, even with the proposed Charter revision, properties acquired with designated federal funds, ratepayer proceeds or sales tax measures would likely still need to be sold for fair value if a non-Metro use is contemplated, even with passage of the potential amendment. Restrictions on how those parcels may be used are not altered by the proposed Charter amendment.

If the CRC ultimately recommends an amendment on this topic, the revised section of the Charter would look as follows:

230.10.10 Metropolitan Municipal Functions. Each metropolitan municipal function authorized to be performed by the county pursuant to RCW ch. 35.58 shall be operated as a distinct functional unit. Revenues or property received for such functions shall never be used for any purposes other than the operating expenses thereof, interest on and redemption of the outstanding debt thereof, capital improvements, and the reduction of rates and charges for such functions. To the extent not otherwise prohibited by law, this section shall not preclude the county from leasing, selling or conveying such properties at less than fair market value for affordable housing purposes.

ADDITIONAL CONSIDERATIONS (the following Additional Considerations were prepared by the Subcommittee for CRC consideration).

Although the Regional Coordination Sub-Committee urges the full Commission to support this proposed amendment to allow for flexibility in the surplus of land consistent with state law, we remain mindful of the old adage – “just because you can, doesn’t mean you should.”

While removing this limitation and bringing the charter in line with State law, we nevertheless believe it is important for the County Council to address a number of important policy issues prior to disposing of any surplus land if the proposed Amendment is adopted.

Prior to disposing of any surplus land, we believe a number of issues need to be considered which should be addressed in County Code or through adopted policies or procedures. Without being fully aware of all current County policies relative to the surplus of property, the following is offered for consideration by the County Council:

1. Capital Projects. Many of these parcels are held by different divisions within the County which have budgeted for the eventual sale of the property estimating fair market value in their balance sheets for capital needs. The sale of property with restrictions that drive down the price will reduce each division’s revenue. Ultimately this loss of revenue will have to be paid for from other sources, potentially impacting other programs or projects. In these instances, the County would be making a trade of affordable housing in exchange for less resources for roads, transit and wastewater treatment.
2. Intergovernmental Accounting. Each government division is to account for the cost associated for providing good and services to other divisions of government. A question arises as to how if at all each entity should account for the cost of a program that shifts financial burdens from one sector of the county to another, although no goods or services are exchanged?
3. Best Use of Funds. If market prices for parcels are high, would it be better to simply sell the property for market value and use the funds to develop low income housing elsewhere in coordination with other agencies which already provide housing such as the King County Housing Authority?ⁱ It is recommended that a fiscal note be developed for each proposed sale.
4. Restrictions on use and Re-sale. In any program there would need to be restrictions on the re-sale and rental of any units to maintain the affordability of the units and prevent them from becoming investment properties. It is suggested that how these restrictions are developed be based on previously adopted successful programs such as Habitat for Humanity.
5. A Temporary Problem. In many parts of the country housing prices and affordability are cyclical in nature, for example Phoenix and Miami. While our region has been on an ever increasing glide path to the top of the market, the downturn in the market from

2007-2010 demonstrated that our region is not immune to market fluctuations. The question then becomes should King County invest in what has traditionally been handled through regulation and market forces?

6. Other Options to Address Housing. Is expanding its role in the housing market the most effective way in which the County can address affordability issues or are more traditional means such as zoning, developer incentives, and expediting permitting in exchange for restricted uses more effective in addressing the affordable housing issues?

7. Limitation on Surplus Power. Although there are current constitutional and statutory limitations on the acquisition of property for governmental purposes those may not be sufficient safeguards to preventing the acquisition of property through voluntary sale, only to be later disposed of for affordable housing at reduced price. The Sub-Committee does not believe that this was what was intended by the amendment in the State Law and would request the County Council further affirm the commitment to not simply buy and resell property to provide additional affordable housing. Such actions could place the County in the role of developer or market speculator with potentially adverse consequences.

REQUEST

Motion and vote approving a proposed Charter Amendment to remove the limitation on the sale of surplus land for affordable housing at less than fair market value consistent with state law. Further, direct staff to prepare the ordinance and an accompanying letter outlining the additional considerations.

ⁱ There are a number of housing authorities in King County, including King County Housing Authority, Seattle Housing Authority, and Renton Housing Authority. Additionally, numerous non-profit agencies assist in providing housing such as Habitat for Humanity.