

# Sale of Surplus Property

## User Notes:

Cities and towns frequently need to sell or convey equipment or property which is no longer needed for municipal purposes. There are relatively few statutes concerning procedures for sale of surplus property. Cities and towns should be familiar with the statutes section listed below, and should keep the following points in mind:

1. Prior to sale, always determine the fair market value of the item to be sold. If you sell it for less, you may be violating [Article VIII, 7](#) of the state constitution, the "gift clause." See RCW 39.33.010 below.
2. A public hearing is not required prior to most sales of surplus property. It may be required for certain intergovernmental sales, RCW 39.33.020 (see below), or sales of property originally acquired for utility purposes, RCW 35.94.040 (see below). AGO 1997 No. 5 concludes that the public hearing requirement in RCW 39.33.020 only applies to intergovernmental transfers of property.
3. Pass a resolution declaring the property to be surplus, and specifying how the property is to be sold, or delegating that task to a particular administrative official.
4. Proceed with sale as required by the town or city council, or in any commercially reasonable way. Sale can be by auction, private sale, sealed bid, through a broker or agent, etc.

## Statutes:

1. Basic authority to purchase and dispose of real estate and personal property:
  - o 1st class cities - [RCW 35.22.280\(3\)](#)
  - o 2nd class cities - [RCW 35.23.010](#)
  - o code cities - [RCW 35A.11.010](#)
  - o towns - [RCW 35.27.010](#) & [RCW 35.27.370\(2\)](#)
2. [RCW 39.33.010](#) - Cities, towns and counties can sell or transfer property to other governmental entities "on such terms and conditions as may be mutually agreed upon." This statute permits transfer for less than value. See AGO 1997 No. 5 for how to harmonize this statute with RCW 43.09.210 which requires that a local government entity receive "full value" when there is an intergovernmental transfer of property.
3. [RCW 39.33.020](#) - This statute requires that a public hearing be held if the value of the property being surplussed exceeds \$50,000. MRSC has interpreted this statute as only applying when property is sold or conveyed to another governmental entity. The statute includes timing and notice provisions. [This statute was amended by Chapter 123, Laws of 1995 to raise the dollar limit from \$5,000 to \$50,000.]
4. [RCW 35.94.040](#) - this statute requires that a public hearing be held if property (real estate or personal property) originally purchased for utility purposes is no longer needed for that use and the city desires to lease, sell or convey the property. A hearing is required regardless of the value of the property.

5. [RCW 42.30.110\(1\)\(c\)](#) - Cities and towns can discuss in executive session the minimum price at which it will sell a particular parcel of real estate if public knowledge regarding such consideration would cause a likelihood of decreased price. This statute enables the council to provide negotiation direction and flexibility to the person delegated to sell real estate.
6. [RCW 42.17.310\(1\)\(g\)](#) - This statute exempts from public disclosure real estate appraisals obtained by the city prior to completion of a sale of the property.
7. [RCW 43.09.210](#) - This statute requires that a local government entity receive "full value" when there is an intergovernmental transfer of property. See AGO 1997 No. 5 which concludes that the concept of "full value" is flexible, depending on the facts.
8. [Chapter 35.94 RCW](#) - If a city or town wishes to sell or lease a public utility, or portions of the utility, it can do so by following the procedures in this chapter. Bids are required, and the council must approve the sale by a two-thirds vote, followed by submitting the issue to the voters.

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