

The Corporation of the City of Port Colborne

By-law No. _____

Being a By-law to Adopt the Revised Sale of Surplus Land Policy

Whereas Section 270(1) of the Municipal Act, 2001, requires municipalities to adopt policies regarding the sale and other disposition of municipally owned land; and

Whereas at its meeting of November 8, 2022, the Council of The Corporation of the City of Port Colborne ("Council") approved the recommendations of CAO Report No. 2022-224, Subject: Revised Sale of Land Policy; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That the policy and procedure respecting the Sale of Land Policy in the City of Port Colborne appended hereto as Schedule "A" and made part of this By-law be approved.
2. That By-law No. 6620/75/18 be hereby repealed.

Enacted and passed this 8th day of November, 2022.

William C. Steele
Mayor

Nicole Rubli
Acting City Clerk

Schedule "A" to By-law No. _____

SALE OF SURPLUS LAND POLICY

Purpose:

To abide by section 270 of the *Municipal Act, 2001* (the "Act") that requires all municipalities to adopt and maintain a policy with respect to the sale and disposition of Real Property.

The City of Port Colborne will dispose of surplus real property of the Corporation in an open and transparent process to ensure that returns are fair, reasonable, and in the best interest of the City.

PART 1 — Definitions

1.1. In this by-law:

- (a) **"Abutting"** shall mean a parcel of land adjoining another parcel of land having one (1) or more lot lines in common;
- (b) **"Affordable Housing"** means a person's housing costs total 30% or less of their household income;
- (c) **"Applicant"** means a person who has enquired or requested to purchase City land;
- (d) **"Appraisal"** means a fair market valuation of land prepared by an accredited Appraiser or the market value obtained by a licensed real estate brokerage firm or a licensed independent real estate agent;
- (e) **"Appraiser"** means a member in good standing of the Appraisal Institute of Canada, holding an Accredited Appraiser Canadian Institute or Canadian Residential Appraiser designation as appropriate;
- (f) **"As is"** means without regard for state of repair, location of any and all structures, walls, retaining walls or fences (freestanding or otherwise) or encroachment by buildings or fences or otherwise, on the land or adjoining properties or streets, and without warranty or representation as to use, environmental contamination, hazards or risks;
- (g) **"CAO"** means the City's Chief Administrative Officer;
- (h) **"City Solicitor"** means and includes the City's Solicitor or external legal counsel from time to time;
- (i) **"Council"** means the municipal Council of the City of Port Colborne;
- (j) **"Disposal"** means the sale, transfer, conveyance, or exchange of the fee simple interest in land;

- (k) **"Easement"** means an interest in land transferred from one party to another, consisting of the right to use or control the land, or an area above or below it, for a specific limited purpose;
- (l) **"Encroachment"** means any type of vegetation, man-made object, or item of personal property which exists wholly or upon, or extends from a person's premises onto, public lands and shall include any aerial, surface, or subsurface Encroachments;
- (m) **"Full Marketability Land"** means land which would in the opinion of the Manager of Strategic Initiatives, or designate, be of interest to potential purchasers in the open market due to size, shape, location, topography, environmental condition, permitted land uses, or any other factor which the Manager of Strategic Initiatives, or designate, considers relevant;
- (n) **"Highway"** means:
 - i. all highways that existed on December 31, 2002;
 - ii. all highways established by by-law on or after January 1, 2003;
 - iii. all highways transferred to the municipality under the *Public Transportation and Highway Improvement Act*;
 - iv. all road allowances made by the Crown surveyors located in the municipality; and
 - v. all road allowances, highways, streets, and lanes shown on a registered plan of subdivision;
- (o) **"Land(s)"** shall mean real property and any improvements thereon owned by the City, including highways which have been or may be stopped up and closed, but does not include:
 - i. any land which Council has otherwise determined by resolution or by-law is not available for sale;
- (p) **"Limited Marketability Land"** means land which would, in the opinion of the Manager of Strategic Initiatives, or designate, be of limited interest to potential purchasers due to size, shape, location, topography, environmental condition, land use restrictions, or any other factor which the Manager of Strategic Initiatives, or designate, considers relevant;
- (q) **"Manager of Strategic Initiatives"** means the Manager of Strategic Initiatives for the City or his or her designate;
- (r) **"Manager of Planning Services"** means the Manager of Planning Services for the City or his or her designate;
- (s) **"Market Value"** means the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer;
- (t) **"Official Plan"** means the Official Plan of the City of Port Colborne, as amended or replaced from time to time;

- (u) **"Real Estate Broker"** means a Real Estate Broker registered under the *Real Estate and Business Brokers Act, 2002*, as amended and Regulations thereto;
- (v) **"Real Property"** means land and buildings which are owned by the City of Port Colborne and includes Full Marketability Land and Limited Marketability Land;
- (w) **"Sale"** and **"Sell"** shall not include:
 - i. a lease of land by the City;
 - ii. transfers of easement or rights-of-way by the City;
 - iii. releases of restrictive covenants by the City; and
 - iv. releases of rights of first refusal by the City.
- (x) **"Surplus"** means Real Property that is not required to meet the current or future program or operational requirements of the Municipality, and that has been declared surplus by Council or its delegated authority.

PART 2 - General

- 2.1 It is the intent of the City of Port Colborne to abide by section 270 of the *Municipal Act, 2001* (the "Act") that requires all municipalities to adopt and maintain a policy with respect to the sale and disposition of Real Property. The City of Port Colborne will dispose of surplus real property of the Corporation in an open and transparent process to ensure that returns are fair, reasonable, and in the best interest of the City.
- 2.2 As part of the City's Affordable Housing Strategy and Action Plan, Council and staff will review the suitability of Surplus Land for affordable housing before marketing and selling the parcel for redevelopment. The terms of this policy, with respect to the sale of land for affordable housing, are subject to modifications and exemptions on a case specific basis.
- 2.3 A by-law containing a legal description of the land and the identity of the purchaser shall be passed to approve the sale of land.
- 2.4 Land required for any municipal purpose, including but not limited to present or future municipal facilities, infrastructure and parks, is not available for sale to the public.
- 2.5 Any survey and/or reference plan required shall be obtained at the expense of the purchaser(s) unless Council by resolution otherwise determines.
- 2.6 Council may impose conditions of sale if deemed appropriate.
- 2.7 All land, with or without improvements, shall be sold on an "as is" basis unless Council determines otherwise.

- 2.8 The City is under no obligation by virtue of the sale of land to grant any approvals, including approvals for changes to the Official Plan or zoning by-law or with respect to site plan control, minor variances, and building permits, or to support approvals required by any other approval authority, which may be necessary for any contemplated use of the land by the purchaser.
- 2.9 Any provisions for public notice provided for in this policy shall prevail over any other existing or future public notice by-law passed by Council. Refer to the City's Public Notice Policy.
- 2.10 The purchaser(s) shall be responsible for the City's legal fees unless Council by resolution otherwise determines.

PART 3 — Responsibility

- 3.1 Staff from the Planning and Economic Development and Tourism Services Divisions will:
- (a) periodically review City-owned Land to determine which Land may be considered surplus;
 - (b) consult with City staff on lands that may be considered Surplus Land;
 - (c) make recommendations to Council about declaring Lands surplus and seek Council's authority to offer the Land for sale;
 - (d) pursue Disposals per this policy and make recommendations to Council or the CAO, as authorized through delegation;
 - (e) obtain independent property Appraisals for Land in keeping with any requirements imposed by any applicable legislation, by-law, or this policy; and
 - (f) report details if any Disposal to the appropriate departments and to the City Treasurer or as they may further delegate for the purposes of maintaining accurate corporate records.

PART 4 – Declaration of Surplus Property

- 4.1 Authority to Declare Lands Surplus
- (a) Where land has an estimated Market Value of \$25,000 or less as determined by an Appraiser, the Manager of Strategic Initiatives or delegate is authorized to declare the Land surplus and to dispose of the surplus land in accordance with this Policy.
 - (b) Where land has an estimated Market Value greater than \$25,000 and not exceeding \$50,000, as determined by an Appraiser, the CAO is authorized to

declare the Land surplus and to approve the intended manner or process by which the Sale of Land will be carried out.

- (c) Where land has an estimated Market Value greater than \$50,000, as determined by an Appraiser, any declaration that the land is surplus shall be made by the Council which shall approve the intended manner or process by which the Sale of Land will be carried out.
- (d) Subject to paragraphs (a) and (b) above, the municipal Council shall, in a meeting open to the public, pass a resolution declaring any such land surplus prior to its disposal.
- (e) An annual report of all activities approved under the delegated authority in Section 4.1(a), and (b) of this Policy will be made by the Manager of Strategic Initiatives to Municipal Council for information purposes.

PART 5 - Appraisals

- 5.1 One (1) Appraisal of the market value of land to be sold shall be obtained and prepared by an Appraiser in accordance with the requirements of the Appraisal Institute of Canada.
- 5.2 Notwithstanding section 5.1, the Manager of Strategic Initiatives, or designate, may:
 - (a) dispense with the requirement of an Appraisal for the following classes of land:
 - i. Land 0.3 metres or less in width acquired in connection with an approval or decision under the *Planning Act*,
 - ii. Land for which the City has obtained an Appraisal within the preceding one (1) year, in the discretion of the Manager of Strategic Initiatives, or designate.

PART 6 — Land Deemed to be Not Marketable

- 6.1 In addition to any other provisions herein, or any resolution or by-law passed by Council, the following lands are deemed to be not marketable:
 - (a) land situated in the Open Space or Environmental Protection designations of the Official Plan, as amended from time to time, in order to protect and promote the public enjoyment of natural features;
 - (b) Any land which Council has by resolution or by-law declared shall not be sold.
- 6.2 City lands deemed to be not marketable are not available for sale to the public.

- 6.3 Where City lands are deemed not marketable, they have the potential to become marketable if an interested purchaser intends to merge their property to a property that is deemed not marketable, and the new parcel meets the minimum frontage and setback for an infill lot.

PART 7 – Land Surveys

- 7.1 Before the disposal of any Real Property, the City shall obtain or require a survey of the land from an independent surveyor in accordance with the laws of the Province of Ontario. The cost of the survey will be borne in accordance with Section 2.5 of this Policy. The Manager of Strategic Initiatives may waive this requirement if an existing survey is available.

SALE OF LIMITED MARKETABILITY LAND

PART 8 — Limited Marketability Land — Policy Statements

- 8.1 The following policy statements shall be applied to all Limited Marketability Land:
- 8.1.1 Limited Marketability Land may only be sold to an abutting owner(s) whose property if combined with the City's land creates a configuration which is acceptable to the Manager of Planning Services, or designate, in accordance with good planning principles.
- 8.1.2 Where appropriate, the land shall be required to legally merge in title with the abutting owner's property. Where necessary, Council shall pass a by-law deeming the City land and/or the abutting owner(s) land not to be part of a registered plan of subdivision in order to effect the merger, and the by-law shall be registered on title by the City prior to the registration of the Transfer/Deed to the purchaser. No fee shall be charged to the abutting owner for the preparation and registration of the Deeming By-law.

PART 9 — Process for Sale of Limited Marketability Land

- 9.1 The initial enquiry by a prospective purchaser (Applicant) shall be made to the Economic Development and Tourism Services Division.
- 9.2 The request process for the sale of Limited Marketability Land shall be divided into phases, as follows:

9.2.1 PHASE 1 — Preliminary Review

Part 5 of this policy shall be reviewed to determine its applicability, and the Applicant shall be advised accordingly.

9.2.2 PHASE II – Circulation

Staff shall conduct a formal circulation to internal departments and any outside agencies as appropriate, to determine any objections to the sale or conditions

which may be required. The Applicant shall be advised of the results of this circulation. In addition, a site visit shall be conducted by City staff to determine any municipal requirements which may need to be addressed upon a sale.

9.2.3 PHASE III — Collection of Deposit and Appraisal

- (a) Should the Applicant wish to proceed with the request to purchase the land, the deposit provided for in Part 10 shall be required.
- (b) Following receipt of the deposit, an Appraisal of the land shall be obtained in accordance with Part 5 of this Policy.

9.2.4 PHASE IV — Notice to Abutting Owners and Disclosure of Appraisal

- (a) The Applicant shall be advised of the appraised value and be required to submit his/her written offer to purchase the land at the appraised value within three (3) weeks, failing which, he/she shall be deemed to have declined to purchase the land.
- (b) All abutting property owners shall also be sent notice via regular mail of the following:
 - (i) a request to purchase City land has been received;
 - (ii) the identity of the Applicant; and
 - (iii) the appraised value;

and shall be required to submit any comments or objections to the sale of the lands in writing, or, submit the deposit as provided in Part 10 together with their offer in writing to purchase the lands at the appraised value, within three (3) weeks from the date of such notice, failing which, they shall be deemed to have no objection nor any interest in purchasing the land. Comments and objections will become part of the public record and included in any subsequent Report to Council.

- (c) In the event that:
 - (i) an abutting owner submits their written offer to purchase the land at the appraised value, and
 - (ii) provided dividing the land equally between the Applicant and the abutting owner would create a configuration acceptable to the Manager of Strategic Initiatives, or designate, in accordance with good planning principles,

then, the Applicant and the abutting owner may agree to divide the land equally between them with the purchase price and all survey/reference plan costs shared proportionately. In the event that a consensus cannot be arrived at, all interested abutting owners will be requested to provide the City with an offer for the entire Limited Marketable Land.

9.2.5 PHASE V- Report to Council

When Council is presented with a report considering the declaration of Real Property to be surplus, the report shall include at minimum:

- a) A description, location, and sketch of the subject Real Property and its current uses.
- b) The reason why the Real Property should be declared surplus to the City's needs.
- c) Associated risk with selling or not selling the Real Property.
- d) Persons, corporations, authorities, local boards, and bodies that should be contacted and notice given (other than the general public notice).
- e) Whether an Expression of Interest has been provided for the subject Real Property and details provided therein.
- f) Recommendations as to the method of disposal.
- g) Recommendations to terms and conditions of a potential disposal.
- h) When Council is presented with a report to consider an offer to purchase Real Property from the City, the report shall include at a minimum:
 - i. A summary of the process used to offer the Real Property for Disposal and results thereof.
 - ii. Potential purchaser and offered price for the subject Real Property.
 - iii. Proposed future use of the property.

Following receipt of the Applicant's and/or another abutting owner's written offer to purchase the land at the appraised value and payment of the deposit required in Part 10, a report shall be submitted to Council for approval, with staff's recommendations.

- 9.3 The Agreement of Purchase and Sale shall be prepared by the City in a form satisfactory to the City Solicitor, who shall have authority to determine and extend the time for closing real estate transactions.
- 9.4 The Transfer/Deed of Land and Land Transfer Tax Affidavit, or electronic version thereof, shall be prepared in registrable form at the expense of the purchaser.
- 9.5 In the event that sale of the land is not completed within one (1) year from the date on which Council passes the by-law authorizing the sale, subsequent requests shall be subject to the provisions of this Policy in all respects. Discussions regarding the Disposal of Real Property may be held in a closed session of Council as defined in the *Municipal Act, 2001*, as determined by the Clerk.
- 9.6 Any discussions made by Council as a result of closed session discussions regarding Disposal of Real Property in a closed session shall be reported out in

a public session by official resolution, as required by the provisions of the *Municipal Act, 2001*.

PART 10 — Limited Marketability Land — Payment of Deposit

10.1 A deposit in the amount of \$300.00 shall be required as follows:

- (a) If the sale of land is prohibited in this policy, and the Applicant wishes to proceed, then the deposit is payable before proceeding to Phase II;
- (b) If the sale of the land to the Applicant will be recommended, payment of the deposit shall be required prior to ordering an Appraisal and submitting a Report to Council;
- (c) Following notice, if another abutting owner provides his or her written offer to purchase the land at the appraised value, such owner shall be required to submit payment of the deposit with his written offer to purchase the land.

10.2 The deposit shall be applied to the purchase price or forfeited, at the times and in the circumstances set out below:

In the event that:

- (i) the Applicant abandons the request before a Report is submitted to Council, the deposit shall be forfeited without interest or deduction;

OR

the sale of land is:

- (ii) not recommended by staff, and Council denies the request, the deposit shall be refunded without interest or deduction;
- (iii) recommended by staff, and Council denies the request, then the deposit shall be refunded without interest or deduction;
- (iv) approved by Council, and the Applicant does not complete the transaction for any reason other than one which may be contemplated in the Agreement of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

10.3 Should a tendering process occur:

- (i) the deposit paid by the successful bidder shall be applied towards the purchase price if the sale is approved and the transaction is completed;
- (ii) the deposit paid by the unsuccessful bidder shall be refunded without interest or deduction;
- (iii) and the successful bidder does not complete the transaction for any reason other than one which may be contemplated in the Agreement

of Purchase of Sale, the deposit shall be forfeited without interest or deduction.

PART 11 – Methods of Sale

- 11.1 Depending on the nature of the land, various methods may be employed for the disposal of land including public auction, tender process, listing through MLS, and direct advertising. The Economic Development and Tourism Services Division shall be responsible for determining the appropriate method to use.
- 11.2 All offers to purchase Real Property from the City by means of an Agreement of Purchase and Sale must be accompanied by a deposit in an amount determined by the Manager of Strategic Initiatives or designate and shall be the greater of \$1,000 or 5% of the offered purchase price. Unless otherwise directed by Council, all Disposals will be on a cash basis. If the CAO is of the opinion that exceptional and specific circumstances exist, that would warrant consideration of a Disposal on something other than a cash basis, a report will be presented to Council for consideration.
- 11.3 The Agreement of Purchase and Sale shall be in a form satisfactory to the City Solicitor.

PART 12 – Non-Application of Policy

- 12.1 This policy is not applicable to the Disposal of land where:
 - a. The transaction is governed by the federal and/or provincial government:
 - i. The sale of lands for Tax Arrears as indicated in the *Municipal Act, 2001*;
 - ii. The expropriation of land under the *Expropriations Act, 1990*; and
 - iii. Any other situations as governed by provincial or federal legislation.
- 12.2 The City is transferring Real Property to a corporation in which the City is the sole shareholder, and the transaction is completed in accordance with Council direction.
- 12.3 The procedures for the closure of highways shall be in accordance with the *Municipal Act, 2001*, as amended, and other relevant statutes.

PART 13 - Application and Administration of Policy

- 13.1 This policy shall be read and applied fairly with such variations as circumstances or the nature of the subject matter require provided the general purpose, intent, meaning and spirit of the policy are maintained.
- 13.2 The Economic Development and Tourism Services Division shall be responsible for developing and implementing forms and procedures for the

administration of this policy by City staff. The City Solicitor shall be responsible for the closing of sale transactions.