

RESOLUTION NO. 11018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA APPROVING CRITERIA FOR THE SALE, TRANSFER AND LEASE TO NONPROFIT AGENCIES OF PROPERTIES OWNED BY THE CITY THAT ARE ENCUMBERED WITH FUNDS FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

WHEREAS, on April 7, 2003, the City Council approved Resolution No. 7991 which approved, in part, the Criteria for the Transfer of Federally Funded Properties utilized by the City;

WHEREAS, City staff recommends to City Council that the criteria be modified to update it in accordance with current U.S. Department of Housing and Urban Development (“HUD”) laws, regulations, policies, and interpretations of the following HUD programs: (i) Community Development Block Grant (“CDBG”), (ii) HOME Investment Partnership (“HOME”), and (iii) Neighborhood Stabilization Program requirements (“NSP”); and

WHEREAS, the City Council finds that modifications to the criteria are appropriate and desires to modify the criteria for the sale, transfer and lease to nonprofit agencies of properties owned by the City that are encumbered with CDBG, HOME, or NSP funds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: The Criteria for the Disposition of City Property Encumbered by CDBG, HOME, or NSP Funding to Nonprofit Agencies attached hereto as Exhibit A is approved.

Section 2: The Criteria for the Transfer of Federally Funded Properties set forth in Resolution No. 7991 as Exhibit A is repealed as of the effective date of this Resolution and is replaced by Exhibit A to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County,

Arizona, this 28th day of August, 2017.



APPROVED:

Mayor

ATTEST:

City Clerk

Criteria for the Disposition of City Property Encumbered by CDBG, HOME, or NSP Funding to Nonprofit Agencies

Properties owned by the City of Mesa (“City”) acquired, rehabilitated, improved, or constructed by the City or a subrecipient using Community Development Block Grant (“CDBG”), Home Investment Partnerships (“HOME”), or Neighborhood Stabilization Program (“NSP”) funds may be sold, transferred, or leased by the City to qualified nonprofit agencies subject to the below stated criteria.

The sale, transfer, or lease of any property pursuant to these criteria (“Criteria”) is subject to the approval of City Council and any requirements in applicable law including, but not limited to, those established by the U.S. Department of Housing and Urban Development (“HUD”) and the Arizona Constitution’s gift clause (Article 9, Section 7). Should the Criteria be found to conflict with applicable law, the law will control.

A. HUD Program Funding Source

The Criteria does not apply to sales, transfers, or leases by the City of property encumbered with Emergency Solutions Grant (“ESG”) funds, which will be made on a case-by-case basis, at the City’s sole discretion, in accordance with applicable law. If a property is encumbered by ESG funds, as well as CDBG, HOME, or NSP funds, the Criteria will control the sale, transfer, or lease of the property. If a property is encumbered by a combination of CDBG, HOME or NSP (collectively “HUD Program(s)”) funds, any conflicts in the Criteria between the requirements of the HUD Programs will be settled in favor of the most restrictive requirements.

B. Sale and Transfer Requirements

1. For the purposes of this Criteria the acquisition of property by a nonprofit agency is a: (i) sale when the acquisition is for an amount greater than or equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-HUD Program funds; or (ii) transfer when the acquisition is for an amount less than required for a sale. A sale or transfer of property could require that HUD Program restrictions remain on the property, depending on the applicable HUD Program requirements. As noted below, certain of the requirements in this Section B apply to only a sale or a transfer.
2. Properties owned by the City that are leased to a nonprofit agency for a continuous period of at least ten (10) years, or such other period deemed reasonable by City Council, are eligible to be sold/transferred to the nonprofit agency leasing the property. If a nonprofit agency merged with or was acquired by another, similar nonprofit agency during the term of the lease, those entities will be treated as the same nonprofit agency in determining if the Criteria requirements are met. Throughout the leasing period, the nonprofit agency must have utilized the property

in accordance with the lease requirements and maintained the property in a decent, safe, and sanitary condition.

3. Upon meeting the requirements of Section B(2) above, a nonprofit agency may submit a request in writing to the City's Housing & Community Development Director asking that the City sell/transfer the property to the nonprofit agency. The decision to sell/transfer property to a nonprofit agency and the terms of the sale/transfer will be: (i) at the sole discretion of the City; (ii) made on a case-by-case basis; and (iii) done only in a manner that serves the best interest of the City.
4. At the City's request, the nonprofit agency must prove to the City that it is a viable, stable agency with the administrative and financial capacity to meet the sale/transfer requirements and maintain the property following sale/transfer. In determining the viability and stability of the nonprofit agency, the City may consider any pertinent information, which may include, but is not limited to: (i) criminal activity, code compliance violations, or zoning code violations at property owned or leased by the nonprofit agency; (ii) findings of noncompliance for projects that received public financial assistance; and (iii) bankruptcies involving the nonprofit agency.
5. City Council has the final authority to approve or deny the sale/transfer of any property and can require any additional conditions that are permitted under the law for the sale/transfer of property, beyond those set forth in the Criteria. Prior to submitting to City Council the request to sell/transfer the property, City staff will determine whether the nonprofit agency has met the requirements under the Criteria. If a nonprofit agency has not met the Criteria, City staff may deny the request without submitting the issue to City Council for consideration.
6. The sale/transfer of the property is subject to the then current, applicable HUD Program requirements including, the requirement of a thirty (30) day public comment period with proper notification to the affected citizens who utilize the property and services of the nonprofit agency.
7. The City and nonprofit agency will enter such contractual agreements as deemed necessary by the City to effectuate a sale or transfer which may include, but are not limited to, any combination of the security instruments listed in Section D below.
8. Requirements Specific to a Sale.
 - a. The sale price must be, at a minimum, equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-HUD Program funds for acquisition or improvements to the property. The consideration provided must meet the requirements set forth in the Arizona Constitution's gift clause. If the property is encumbered by HOME or NSP funds, the restrictions for the Period of Affordability (defined below) may be required to remain on the property for a time after the sale.

- b. Upon the sale of the property, the proceeds from the sale of the property will be paid proportionately to the HUD Program(s) whose funding encumbered the property.
9. Requirements Specific to a Transfer.
- a. CDBG Encumbered Properties.
 - i. The consideration for the transfer of CDBG encumbered property will include, at a minimum, a requirement that the nonprofit agency continue the existing CDBG eligible activity at the property that is currently being performed by the nonprofit for so long as the City receives any funding for the CDBG grant program, plus an additional five (5) years after the City ceases to receive funding from the CDBG program (“Continued Use Period”). The consideration provided must meet the requirements set forth in the Arizona Constitution’s gift clause.
 - ii. The nonprofit agency may request the City seek a waiver from HUD related to the length of the Continued Use Period. If a waiver is sought, the property cannot be transferred to the nonprofit agency until HUD approves or denies the waiver. If the waiver is granted, in whole or in part, the security documents and agreements related to the transfer will reflect HUD’s recommendation for the Continued Use Period. If the waiver is not granted, the nonprofit agency must agree to the Continued Use Period as described in Subsection (i) above for the City to transfer the property.
 - iii. Following transfer and during the required Continued Use Period, if the nonprofit agency wishes to change the use of the eligible HUD Program activity, to another eligible HUD Program activity, the change of use must meet all applicable laws, including meeting the requirement of a thirty (30) day public comment period with proper notification to the affected citizens who utilize the property and services of the nonprofit agency.
 - b. HOME or NSP Encumbered Properties. The consideration for the transfer of HOME or NSP encumbered property will include, at a minimum, a requirement that the nonprofit agency continue the HOME/NSP eligible activity for so as long as is necessary to meet the period of affordability requirements for the property under the HOME/NSP program (“Period of Affordability”). The consideration provided must meet the requirements set forth in the Arizona Constitution’s gift clause.

C. Lease

1. Properties owned by the City may be leased to a nonprofit agency at the discretion of the City.
2. A nonprofit agency may submit a request in writing to the City's Housing & Community Development Director that the City lease certain City owned, HUD Program encumbered property to the nonprofit agency. The decision to lease property to a nonprofit agency and the terms of such a lease will be made on a case-by-case basis, at the sole discretion of the City and in the City's best interest.
3. At the City's request, the nonprofit agency must prove to the City that it is a viable, stable agency with the administrative and financial capacity to meet the lease requirements and maintain the property following lease. In determining the viability and stability of the nonprofit agency, the City may consider any pertinent information, which may include, but is not limited to: (i) criminal activity, code compliance violations, or zoning code violations at property owned or leased by the nonprofit agency; (ii) findings of noncompliance for projects that received public financial assistance; and (iii) bankruptcies involving the nonprofit agency.
4. City Council has the final authority to approve or deny the leasing of any property and can require any additional conditions that are permitted under the law for the leasing of property, beyond those set forth in the Criteria. Prior to submitting to City Council the request to lease the property, City staff will determine whether the nonprofit agency has met the requirements for a lease under the Criteria. If a nonprofit agency has not met the Criteria, City staff may deny the request without submitting the issue to City Council for consideration.
5. The City will require that a nonprofit lessee provide consideration for the leasing of City property in accordance with the requirements of the Arizona Constitution's gift clause. The nonprofit lessee must remain the same throughout the term of the lease and the property may not be subleased without the express written authorization of the City. If a nonprofit agency merges with or is acquired by another, similar nonprofit agency during the term of the lease, those entities will be treated as the same agency.
6. Throughout the term of the lease, including any renewal or extension periods, the nonprofit agency must, at a minimum: (i) use the property as an eligible HUD Program activity in accordance with applicable law; and (ii) maintain the property in a decent, safe, and sanitary condition.
7. If the nonprofit lessee wishes to change the use of the existing eligible HUD Program activity to another eligible HUD Program activity, the change must meet all applicable HUD requirements, including the requirement of a thirty (30) day public comment period with proper notification to the affected citizens who utilize the property and services is required.

8. The City and nonprofit agency will enter such contractual agreements as deemed necessary to effectuate the lease.

D. Security Instruments and Options

The City may use any security instruments and options available to protect the interests of the City and to ensure sold, transferred, or leased HUD Program funded properties continue to be used for eligible purposes in accordance with applicable law. The security instruments and options may include, but are not limited to, any combination of the following:

1. Promissory Note
2. Deed of Trust
3. Purchase Options
4. Deed Restrictions
5. Land Covenants
6. Rights of First Refusal
7. Other Preemptive Rights