

From: [Lee S. Smith](#)
To: [Mayor Bernard](#)
Cc: [Joel Bard](#)
Subject: Mohawk Theater
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Attachments: [theater_20211026131427.pdf](#)

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Mayor Bernard,

You have asked whether City Council approval is required to approve the sale of the Mohawk Theater where the only response to a request for proposals for the disposition of the property included an offered purchase price that is less than the assessed value of the property. In my opinion, there is no requirement that further authorization by the City Council is required.

I have reviewed G.L. c. 30B s. 16, the City's Charter, Ordinances, and prior vote of the City Council. Ordinance Section Article XXIII-B, Section 2-128B provides:

"The Mayor shall seek authorization of the City Council pursuant to General Laws, Chapter 40, Section 3 to sell or dispose of any real estate owned by the City of North Adams. No order authorizing the sale or disposition of real estate shall be passed finally on the date on which it is introduced, except in cases of special emergency involving the health or safety of the people or their property as declared in a preamble thereto separately voted on and receiving the affirmative vote of 2/3 of the members of the City Council. Every such order, except emergency orders as hereinbefore defined, shall be published once in full in a local newspaper with a daily circulation, prior to final passage by the City Council. Written notice of intent to sell or dispose of such real estate shall be given to the owners of real estate directly abutting and/or within a one-hundred-foot radius of the real estate to be sold or disposed of prior to the Mayor seeking authorization of the City Council, except in cases of emergency as hereinbefore defined."

By Order No. 11,767 dated February 12, 2019 (copy attached), the City Council declared the Mohawk Theater property "to be no longer needed for municipal purposes, and available for disposition; and shall maintain the historic integrity of the marquee in perpetuity" [sic], and ordered that the Mayor is authorized to dispose of the property in accordance with the requirements and provisions of G.L. c. 30B, s. 16 "to include executing a purchase and sale agreement for the property."

In my opinion, said City Council Order gives broad authority to the Mayor to dispose of the property without further authorization, provided that the disposition complies with G.L. c. 30B.

G.L. c. 30B, s. 16(g) provides, "If the governmental body decides to dispose of property at a price less than the value as determined pursuant to paragraph (b) [determining the value through procedures customarily accepted by the appraising profession as valid], the governmental body shall publish notice of its decision in the central register, explaining the reasons for its decision and disclosing the difference between such value and the price to be received.

You have stated that the purchase price offered pursuant to the Request for Proposals is significantly less than the assessed value of the property which I assume was properly determined as required by G.L. c. 30B, s. 16(b).

As such, notice of the sale for less than fair market value must be published in the Central Register explaining the reasons for the decision to sell at such price and disclosing the difference between the property value and the price to be received. Such notice must further include a valid public purpose, including without limitation, promotion of the public welfare. The link to the Central Register form to be filed is included below. Please let me know if you need my assistance

with the preparation and/or submission of the filing and/or if I can be of further assistance.

<https://www.sec.state.ma.us/sprpublicforms/RPSubmissionForm.aspx>

-Lee

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