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ORDINANCE NO. 2011-37

AN ORDINANCE TO DECLARE CITY VEHICLE(S) AND/OR EQUIPMENT AS SURPLUS PROPERTY AND GRANTING AUTHORIZATION TO SELL SAID SURPLUS VEHICLE(S) AND EQUIPMENT ON THE OPEN MARKET, UPON SUCH TERMS AND AT SUCH PRICES AS ARE DEEMED MOST ADVANTAGEOUS TO THE CITY OF WILLOUGHBY HILLS AND DECLARING AN EMERGENCY.

WHEREAS, Mayor Weger, submitted a Memorandum, dated May 25, 2011 to President of Council, along with a copy of a Police Memorandum from Chief Christopher J. Collins, dated May 25, 2011 to the Mayor/Safety Director Robert M. Weger, both are attached hereto marked as “Exhibit A”, consisting of a total of (4) pages and incorporated herein by reference, requesting that multiple Police Vehicles be declared as surplus property; and

WHEREAS, pursuant to Ohio Revised Code, Section 721.15 (A) – Disposition of unneeded, obsolete or unfit personal property states: “Personal property not needed for municipal purposes, the estimated value of which is less than one thousand dollars, may be sold by the board or officer having supervision or management of that property. If the estimated value of that property is one thousand dollars or more, it shall be sold only when authorized by an ordinance of the legislative authority of the municipal corporation and approved by the board, officer, or director having supervision or management of that property. When so authorized, the board, officer, or director shall make a written contract with the highest and best bidder after advertisement for not less than two or more than four consecutive weeks in a newspaper of general circulation within the municipal corporation, or with a board of county commissioners upon such lawful terms as are agreed upon, as provided by Division (B) (1) of Section 721.27 of the Ohio Revised Code”; and

WHEREAS, Section 721.15 (D) further states: “Notwithstanding anything to the contrary in Division (A) or (B) of this Section and regardless of the property’s value, the legislative authority of a municipal corporation may sell personal property, including motor vehicles acquired for the use of municipal officers and departments, and road machinery, equipment, tools, or supplies, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, by internet auction. The legislative authority shall adopt, during each calendar year, a resolution expressing its intent to sell that property by internet auction. The resolution shall include a description of how the auctions will be conducted and shall specify the number of days for bidding on the property, which shall be no less than fifteen days, including Saturdays, Sundays, and legal holidays. The resolution shall indicate whether the municipal corporation will conduct the auction or the legislative authority will contract with a representative to conduct the auction and shall establish the general terms and conditions of sale. If a representative is known when the resolution is adopted, the resolution shall provide contact information such as the representative’s name, address, and telephone number.

After adoption of the resolution, the legislative authority shall publish, in a newspaper of general circulation in the municipal corporation, notice of its intent to sell unneeded, obsolete, or unfit municipal personal property by internet auction. The notice shall include a summary of the information provided in the resolution and shall be published at least twice. The second and any subsequent notice shall be published not less than ten nor more than twenty days after the previous notice. A similar notice also shall be posted continually throughout the calendar year in a conspicuous place in the office of the village clerk or city auditor, and the legislative authority, and, if the municipal corporation maintains a website on the internet, the notice shall be posted continually throughout the calendar year at that website.

When the property is to be sold by internet auction, the legislative authority or its representative may establish a minimum price that will be accepted for specific items and may establish any other terms and conditions for the particular sale, including requirements for pick-up or delivery, method of payment, and sales tax. This type of information shall be provided on the internet at the time of the auction and may be provided before that time upon request after the terms and conditions have been determined by the legislative authority or its representative"; and

WHEREAS, to aid in the process of disposing surplus property, the City has solicited the online auction services provided by Public Surplus, Area Manager Shawn Robinson who can be reached by telephone: (800) 591-5546, extension 154; by mail: P. O. Box 50676, Provo, Utah 84605; or by email: shawnr@ublicsurplus.com.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WILLOUGHBY HILLS, COUNTY OF LAKE, STATE OF OHIO THAT:

SECTION 1. The following vehicle(s) with an estimated value of under a \$1,000 be and are hereby declared to be surplus property of the City and are available for disposition:

**2001 Brown Dodge Stratus SE (Forfeited), VIN: 2B3EJ46X61N552283, Mileage 133,885
2001 Gray Dodge Intrepid (Forfeited), VIN: 2B3HD46R71H661303, Mileage 174,196**

The aforementioned 2001 Dodge vehicles have been alerted with hidden traps used to transport contraband and their value is less than \$1,000; the Police Chief requested that these two vehicles be destroyed and/or scrapped.

SECTION 2. The following vehicle(s) with an estimated value of over \$1,000 be and is hereby declared to be surplus property of the City and available for disposition through sale and/or internet auction:

2007 Dodge Charger Police Package, VIN#2B3LA43H07H771049, mileage 98,777; valued greater than \$1,000

2007 Dodge Charger Police Package, VIN#2B3LA43H57H771046, mileage 99,353; valued greater than \$1,000

SECTION 3. The Public Internet Auction for the aforementioned vehicle shall be held on the Public Surplus Web Site (www.publicsurplus.com) for a period of twenty-one (21) days. Notice of this auction will also be advertised in the News Herald, on Channel 12 and on the City Website in accordance with all applicable local, state and federal laws.

SECTION 4. Any transaction pursuant to this Section shall be conducted in accordance with the following procedure:

- (a) Prior to the open bidding period, notice of the City's intent to sell property via internet auction shall be published at least once a week for three successive weeks in the News Herald. Said notice shall include a complete description of the vehicles and equipment to be sold; the date, time and location where the auction will be held; the terms and conditions of sale; and any other information necessary to allow interested members of the general public to participate in the online public auction.

- (b) Prior to the commencement of the open bidding period, notice of the City's intent to sell property via internet auction shall be posted in a conspicuous place in City Hall.
- (c) Prior to the commencement of the open bidding period, notice of the City's intent to sell property via internet auction shall be published on the City's Website at www.willoughbyhills-oh.gov
- (d) Each vehicle and piece of equipment will be listed for open public bidding for a minimum of twenty-one (21) days, including weekends, and legal holidays.
- (e) Vehicle and equipment will be listed "for sale" for public auction on the Public Surplus Web Site. The listing shall describe the vehicles and equipment in detail including but not limited to the following items: the price, make, model, color, general operating condition, condition of the exterior, condition of the interior, the odometer reading, any other feature that would interest the reasonable consumer. A picture of each vehicle or piece of equipment for sale shall accompany every listing.
- (f) Minimum bid for each vehicle listed will be set at \$1,100.00.

SECTION 5. Terms and Conditions of Sale will be as follows:

1. Eligibility

A bidder must be a minimum of 18 years old and legally able to form binding contracts as a "buyer" in an auction.

Elected Officials of the City of Willoughby Hills are prohibited from directly or indirectly bidding on or paying for items in which they have legislatively declared as surplus property.

2. Conditions of Sale

Sale of all surplus property is, as is and where is, with all faults and without warranty. The description of surplus property offered for sale has been compiled from available data, but there is no guaranty or warranty on the part of the City of Willoughby Hills as to condition or quality. Further, the City makes no warranty, guaranty or representation of any kind, expressed or implied, as to the merchantability or fitness for any purpose of the property offered for sale. The successful bidder is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.

The City of Willoughby Hills reserves the right to withdraw any equipment and/or vehicle(s) being offered for sale.

The City of Willoughby Hills will furnish no services of any kind to the successful bidder for any and all costs associated with shipping including but not limited to packaging, crating, loading, freight unless otherwise indicated.

The sale of the equipment and/or vehicle(s) will be to the highest responsive and responsible bidder. There shall be no refunds or adjustments on the successful buyer's price, all sales are final. Each bid is received with the understanding that the acceptance by the City of the offer to purchase any or all of the items described therein shall constitute a contract between the successful bidder and the City of Willoughby Hills and is obligated to pay the price bid. Placing the winning bid, but not paying

for the product, is illegal in most states, and may result in prosecution. The winning bid cannot be retracted unless due to a fault of the City.

3. Inspection

The City of Willoughby Hills shall have the equipment and/or vehicle(s) available for inspection by appointment only and prior to the start of the bidding. All bidders must adhere to the inspection dates and times indicated in the equipment and/or vehicle(s) description and contact only the person(s) listed to schedule an inspection.

4. Bids

Bids submitted shall remain firm for a period of five (5) days following the closing date. The successful bidder(s) will be required to remit payment within five (5) calendar days from date of the Notice of Award.

The award will be made to the highest responsive, responsible bidder. **Notice of Award will be provided by Public Surplus, LLC via e-mail to the successful bidder.**

Awarded items must be removed from the City's premises within five (5) business days from the time and date of issuance of the Notice of Award.

Successful bidder are responsible for loading and removal and any and all property awarded to them from the place where the property is located as indicated on the website and in the Notice of Award. The successful bidder will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Under no circumstances will the City assume responsibility for packing, loading or shipping. The City of Willoughby Hills may be contacted for any and all additional information.

5. Surcharge

A seven percent (7%) surcharge shall be added to all purchases made. The surcharge is the cost to the City of Willoughby Hills for the utilization of the third-part website provider (Public Surplus). The successful bidder shall add and include the surcharge amount when making payment to the City of Willoughby Hills.

6. Taxes

Any and all taxes, federal, state and local, due on the sale of the equipment and/or vehicle(s) shall be paid by the successful bidder.

7. Payment

Payment in full is due no later than five (5) days from the time and date of the Notice of Award. Payment shall be in the form of: Cash, Certified Check, Cashier's Check or Money Order made payable to the City of Willoughby Hills. Remit payment along with the email Notice of Award to: The Director of Finance of The City of Willoughby Hills, 35405 Chardon Road, Willoughby Hills, Ohio, 44094.

The City will issue a title or certificate for a vehicle only upon receipt of full payment. Titles may be subject to any restrictions as indicated in the item description on the website. Open titles cannot be issued. The City of Willoughby Hills will not issue replacement titles.

8. Default

If the successful bidder fails to pay for the property within five (5) days from the Notice of Award, the surplus property purchased may be promptly re-sold in such manner as the City may elect and the defaulting bidder will be charged with any loss or additional cost incurred by the City.

9. Liability

The successful bidder shall assume all liability for the property after the Award is made. The City of Willoughby Hills will exercise its normal care for protection up to the time for removal, but will not be responsible for any loss or damage whatsoever. No property may be removed by or released to the successful bidder prior to the City receiving full payment for said property.

10. Acceptance of Terms and Conditions

By submitting a bid, the successful bidder (buyer) agrees that they have read, fully understand and accept the Terms and Conditions of Online Sales, and agree to pay for and agree to remove the property per the terms and conditions stipulated herein.

11. Applicable Law; Venue

Any contract resulting from this solicitation shall be governed in all respects by the laws of the State of Ohio and any litigation with respect thereto shall be brought only in the Lake County Common Pleas Court located in Painesville, Ohio.

SECTION 6. The actions of this Council concerning and relating to the passage of this legislation were conducted in lawful meetings of this Council and that all deliberations of this Council and any of its committees that resulted in such formal action were in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the City of Willoughby Hills.

SECTION 7. This Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, safety and welfare of the inhabitants of the City of Willoughby Hills, insofar as it provides for the usual operation of a municipal department; to wit: to immediately expedite the sale of vehicles and or equipment declared as surplus property by City Ordinance; wherefore this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: June 9, 2011

David A. Reichelt
David A. Reichelt
President of Council Pro-tem

Submitted to the Mayor for his approval
on this June 9 day of June, 2011

Approved by the Mayor
June 9, 2011

ATTEST:

Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council

Robert M. Weger
Robert M. Weger
Mayor