**From:** Mark R. Reich <MReich@k-plaw.com>
**Sent:** Thursday, March 31, 2022 1:30 PM
**To:** Heather Shand
**Cc:** Ethan Manning; Richard Jones; Sean Reardon
**Subject:** RE: MGL Ch 44, Sec 63 - Sale of real estate proceeds

Councilor –

As I understand the circumstances, the City Council approved ORDR074\_08\_29\_16, which addressed the disposition of the former Kelley School.  The Ordinance included provisions of the transfer of the care, custody, and control of the former school property from its then-current use to the purpose of disposition by the Mayor.  Please be aware that the provisions of G.L. c. 40, sec. 15A  address the process for transferring municipal property, and specify a two-thirds vote requirement for such transfer.  It is my understanding that this Ordinance was approved with the requisite two-thirds vote by the City Council.

As the City’s Chief Financial Officer points out in the below e-mail, the proceeds derived from sale of municipal property are to be used in accordance with the provisions of G.L. c. 44, sec. 63.  The intent of ORDR319\_02\_14\_2022 is to revise the allowable use of those sale proceeds.  I have not been asked to examine those uses in the context of G.L. c. 44, sec. 63, which I believe have been reviewed by the Chief Financial Officer, but have been specifically asked if passage of ORDR319\_02\_14\_2022 requires a two-thirds vote of the City Council in the same manner as was required for passage of ORDR074\_08\_29\_16.

In my opinion, the passage of ORDR074\_08\_29\_16 was subject to the two-thirds vote requirement as the Ordinance involved the transfer of property from one use to another, in accordance with the provisions of G.L. c. 40, sec. 15A.  The subsequent ORDR319\_02\_14\_2022 does not address the issue of property disposition and the transfer of interests, but instead deals with the use of proceeds obtained from the disposition of the subject property.  In my opinion, the transfer of property was appropriately addressed through passage of ORDR074\_08\_29\_16 by a two-thirds majority vote.  In my further opinion, ORDR319\_02\_14\_2022, addressing and amending the use of proceeds, does not itself involve the transfer of the subject property and so is subject to a simple majority vote requirement for passage.

I hope this discussion is helpful in resolving this issue.  Please let me know if you have any further questions or concerns.

Thank you.

Mark

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