



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2016 MAY 26 PM 5:28

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** Report on Public Lands Policy and  
Possible Implementing Actions

**DATE:** May 25, 2016

City Administrator Approval

Date:

5/26/16

## RECOMMENDATION

**Staff Recommends That The Council Receive This Informational Report And Take Possible Action Directing Staff To Prepare The Necessary Legislation To Implement An Updated Public Lands Policy.**

## EXECUTIVE SUMMARY

The City's report "Oakland at Home: Recommendations for Implementing *A Roadmap Toward Equity* From the Oakland Housing Cabinet," published in March 2016, and the Mayor's accompanying Housing Action Plan, included specific recommendations from a working group tasked with identifying policies and actions to give priority consideration to the development of affordable housing on City land, as well as depositing some portion of proceeds from the sale of City land into the Affordable Housing Trust Fund ("AHTF"). The City's existing policies and procedures regarding the acquisition and disposition of public land are found in the Oakland Municipal Code (O.M.C.), Chapters 2.41 and 2.42. This report and **Attachment A** contain staff's recommended amendments to the O.M.C. that would implement many of the working group's affordable housing goals, while continuing to balance the need to develop housing at all income levels alongside other public benefit goals such as economic development, fiscal sustainability, infrastructure improvements, and other community benefits. The key amendments include a process for soliciting development proposals from affordable housing developers, when appropriate, a provision that residential development projects on land acquired from the City include at least 15 percent of the units as affordable, and a requirement that 30 percent of net sales proceeds be directed to the AHTF.

Separate from this staff report and proposed recommendations, there are a few other related public lands policy recommendations being prepared for subsequent consideration in the near future. These include: (a) identifying funds in the mid-cycle budget to engage a professional consultant to prepare a Real Estate Portfolio Asset Management Plan; (b) establishing a framework for leasing City-owned space at below market rental rates for not-for-profit and cultural arts uses; and (c) placing a City Charter amendment on the November ballot to extend the maximum period for leasing City property from 66 years to 99 years. One other public lands working group recommendation which needs additional research and discussion is consideration of policy related to capturing value derived from "public action" (as further

Item:           

Community & Economic Development Committee  
May 31, 2016

described in the working group's recommendations provided in **Attachment C**). Staff has committed to continuing discussions with the working group on this topic.

## **BACKGROUND / LEGISLATIVE HISTORY**

As stated in the report "Oakland at Home: Recommendations for Implementing A Roadmap Toward Equity From the Oakland Housing Cabinet":

*The City of Oakland is itself a major property owner within the City - owning parking lots, parking structures, under-used buildings and other underutilized sites. Yet it does not have, as most cities do, a comprehensive Asset Management Plan for City-owned Real Estate, nor does it establish specific goals and targets for using City land to build or subsidize affordable housing. A comprehensive public lands strategy will be an important tool for the City – presumably creating more resources and certainly more predictability in the City's processes.*

*Through an initial review of the public land owned by the City, we know that there are many small parcels scattered throughout the City as well as many parcels of all sizes zoned for commercial or industrial use. There are parcels suitable for all kinds of uses that would directly or indirectly benefit the community. Generally, we observed that there are select few parcels suitable for multifamily housing development or that would compete successfully for the funding available for affordable housing development – making the parcels that are appropriate quite important. This acknowledgment sharpened our recognition that in order to yield housing units, it is important to use the few sites well, require affordable housing in projects on public land zoned for housing or mixed use, and simultaneously perhaps designate at least a portion of the proceeds of any type of City-owned land sale for affordable housing.*

*The use of public lands in general is attracting more attention statewide as local jurisdictions and agencies try to create affordable homes in a resource-constrained environment. Making the creation of affordable housing an explicit goal for the development or sale of City-owned land would also be an important precedent for the many agencies (Oakland Unified School District, AC Transit, CalTrans, EBMUD, etc.) that own land in Oakland. BART's recent adoption of a goal that 20% of affordable housing development on its land will be affordable is an example of how a public agency can take a strong stance to advance this important public purpose.*

The Housing Cabinet report and action plan (see excerpts provided in **Attachments B and C**) include several recommendations from the public lands working group, including the following:

- A. Develop an Asset Management Plan for City-owned real estate (potential surplus/development properties/properties for lease) through a Request For Proposals (RFP) process. Cost: approximately \$90,000 for a consultant. If funds are identified, this is to be completed within six months of contract award.

- 1) Identify City properties with surplus potential and target properties with potential capacity to build 50 units or more. Develop a strategy that assesses maximum development potential and the value of a site, as well as the value with varying levels of affordable housing production.
  - 2) Ascertain potential to partner with agencies owning properties nearby.
  - 3) Issue RFPs for potential affordable housing sites within a year after completion of the Asset Management Plan.
- B. Dispose of City properties and include an affordable housing benefit.
- 1) Analyze land owned by the City for suitability as affordable housing (i.e., appropriate for multi-family residential use, close to transit and amenities, and large enough to compete for State and Federal funding sources). For suitable sites, those sites will be evaluated as 100 percent affordable housing sites, or as mixed-income sites with a minimum threshold of 15 percent of the units affordable. Evaluate the potential subsidy required under each scenario to produce affordable housing units. For sites to be disposed of for market-rate housing that are not suitable for 100 percent affordable housing, those sites will have an inclusionary target of 15 percent below market rate (BMR) units at an average of 80 percent of Area Median Income (AMI), or pay a fee of \$20,000 per market rate unit, whichever provides greater benefit to the City.
  - 2) For any site that is disposed of that generates net sales proceeds to the City, 30 percent of the net sales proceeds shall be deposited in the AHTF.
  - 3) Analyze the potential for smaller sites zoned for housing to be developed and financed by alternative public or private resources.

### **Real Estate Portfolio Asset Management Plan (“REPAMP”)**

The City recognized several years ago that there was a need to prepare a professional Asset Management Plan for its real estate portfolio. The goals of the REPAMP would be to:

- A. Identify all properties in which the City has ownership, leasehold or easement interests. It has been recognized that the existing available list of City properties is incomplete and lacks consistent current information. In some cases, properties have never been identified by the County Assessor with parcel numbers, or title records may not be accurate and updated.
- B. Perform a first order current valuation of each property.
- C. Determine highest and best use for properties based on existing zoning.
- D. Evaluate properties that are vacant and underutilized and determine their potential for other City uses, as potential affordable housing or other development opportunities, or to be sold as surplus property. This would be a good opportunity to evaluate such properties' potential for affordable housing development, particularly those that are near transit and could leverage outside funding sources.

The City three times previously identified a potential funding source for the REPAMP – each time from the potential sale of property. However the sales of those properties did not move forward and, thus, the funding was never realized. City staff has recently identified other potential funding sources to move this project forward and will be including that

recommendation with the mid-cycle budget process for City Council approval. With that approval, this work could begin immediately.

**Recent Real Estate Dispositions and Public Benefits Received**

Under the existing public lands policies in the O.M.C. for real estate dispositions (updated most recently in January, 2015, by Ordinance No. 13287 C.M.S.), the City has been negotiating development agreements that have yielded an increasing level of public benefits, including affordable housing on-site and contributions to the AHTF. The following 16 projects approved by Council within the last two years are expected to yield over 2,700 new residential units, including 923 units or 34 percent affordable to very low-, low-, and moderate-income households. Two projects are providing almost \$5 million collectively to the AHTF and could generate another 50 affordable units, based on the average per unit subsidy the City provides to affordable housing developers that use City funds to leverage other sources.

Estimated Housing Production on City Property with Agreements In Place 5/10/2016							
Project Name	Location	Status	Date	Residential Units	Affordable Units	% Affordable	\$ In Lieu to AHTF
Seminary Point Shopping Center	Foothill/Seminary	DDA	6/15	0		Retail	
City Center T-5/6	Clay/11th/12th Streets	DDA	9/15	225	0	0%	\$1,800,000
Fruitvale Transit VillagePhase IIA	E. 12th/San Leandro Streets	DDA	12/15	94	80	85%	
23rd & Valdez	2315 Valdez/2330 Webster	DDA	1/16	234	36	15%	
Coliseum Transit Village	70th Ave/71st Ave/Snell St	OPA	1/16	110	55	50%	
West Oakland Transit Village	500 Kirkham Street	DDA	5/16	417	32	8%	\$3,150,000
Brooklyn Basin *	Embarcadero/5th to 10th Ave		NA	465	465	100%	
2100 Telegraph Ave	2100 Telegraph Ave	ENA	10/14	250	38	15%	
Fruitvale Transit VillagePhase IIB	E. 12th/San Leandro Streets	ENA	11/14	181	0	0%	
Kaiser Convention Center	10 10th Street	ENA	7/15			Commercial	
Oakland Acura	Oakport Street	ENA	9/15			Retail	
3050 International Blvd	3050 International Blvd	ENA	9/15			Retail	
Derby Avenue	Derby Avenue	ENA	9/15			School	
1911 Telegraph Ave	1911 Telegraph Ave	ENA	1/16	330	50	15%	
12th Street Remainder	E 12th St/2nd Ave	ENA	3/16	360	108	30%	
7th & Campbell *	7th & Campbell Streets	ENA/DDA	6/16	60	59	98%	
Total Units				2,726	923	34%	\$4,950,000
with Additional Units Financed by AHTF deposits (Estimated)					50	36%	

\* Affordable Housing Sites owned by Housing Successor Agency or City are assumed to be 100% affordable.

It is important to note that most of these properties were former Redevelopment Agency properties, some specifically acquired with housing funds set aside for the purpose of producing affordable housing. The Oakland Redevelopment Successor Agency ("ORSA"), as successor to the Redevelopment Agency, is still bound by a provision in redevelopment law that requires that new housing produced in a redevelopment project area over a 10-year compliance period must include 15 percent of the total units built be affordable to households at less than 120 percent of AMI, of which six percent must be below 50 percent of AMI.

In addition to the production of affordable housing from these public lands, the City has also been negotiating for economic development needs such as replacing public parking garages, adding retail and cultural arts space, adding hotel rooms and generating long term fiscal

revenue streams to pay for future City needs and services. The City expects to receive over \$41 million in net sales proceeds from those properties approved for sale. Depending on the original source of the funds used to purchase the development property, the sales proceeds will be either reinvested in other redevelopment projects, used to fund other affordable housing needs, or deposited into the General Purpose Fund for other capital needs of the City.

**Potential for Affordable Housing from Future Dispositions**

Beyond the properties listed above with active disposition and development agreements, the greatest potential for future production of affordable housing from public lands is on the properties the City retained from the dissolution of the Redevelopment Agency which are shown in the following table. Under ORSA's Long Range Property Management Plan, these properties have been approved for future development. Three of the properties were acquired with affordable housing funds and are expected to be developed with all units at affordable prices or rents. The other 12 properties were acquired for economic development purposes and thus are expected to have a combination of uses. Based on the recommended changes to the City's public lands policy contained in this report, staff has assumed these developments would include at least 15 percent of the units as affordable. If successful in realizing development on these properties, they could yield additional housing production of more than 5,200 units and over 1,000 affordable units.

Estimated Housing Production on City Property under future solicitation for development 5/10/2016							
Project Name	Location	Land Area	Zoning	Appropriate for Affordable Housing?	Units Allowed	Potential Affordable Units @ 15% *	
1800 San Pablo Avenue	521 19th Street	44,347	CBD-X	Yes	493	74	
36th & Foothill	3550-3614 Foothill Blvd.	34,164	RU-5	Yes	76	11	
10451 MacArthur	10451 MacArthur Blvd	23,000	CN-3	Yes	51	8	
27th & Foothill	2759-77 Foothill Blvd	22,581	RU-5	Yes	50	8	
66th & San Leandro	905 66th Ave	274,428	IG	No	NA		
Clara & Edes	9418 EdesAve606 Clara St	26,311	RM-4	No	24	4	
Hill Elmhurst	9409-9437 International Blvd	28,802	CN-3	Yes	64	10	
Coliseum City	Various Sites	1,504,670	D-CO-2 **	Yes	4,000	600	
Rotunda Garage remainder	524 16th Street	6,697	CBD-C	Yes	74	11	
8280 MacArthur	8280 MacArthur Blvd.	6,720	RU-4	No	15	2	
8296 MacArthur	8296 MacArthur Blvd.	6,000	RU-4	No	13	2	
73rd & International	7318 International Blvd	5,435	CC-2	No	20	3	
Oak Knoll *	Barcelona Street	205,337	RH-3	No	17	17	
Wood Street *	1707 Wood Street	147,081	D-WS **	Yes *	267	267	
Golf Links Rd/82rd Ave/MacArthur *	82nd Ave/Golf Links Rd	41,072	RU-4	No(?) +	91	91	
<b>Total Units</b>		<b>2,376,645</b>			<b>5,256</b>	<b>1,107</b>	<b>21%</b>

\* Affordable Housing Sites owned by City as housing successor are assumed to be 100% affordable.  
 \*\* Also consider Specific Plans when calculating units allowed.  
 + Several non-contiguous parcels in a single family neighborhood.

Beyond the above listed properties, a review by the working group of other potential City-owned lands did not reveal more than a few parcels with the potential for development of affordable

units. A more detailed review of these and other properties under the REPAMP will provide a more accurate assessment of other properties that may become available for disposition or development under the updated guidelines proposed herein, and yield additional affordable housing from public land.

## **ANALYSIS AND POLICY ALTERNATIVES**

**Attachment A** contains staff's suggested changes to the Oakland Municipal Code (O.M.C.) to address the public lands working group recommendations to establish goals and targets for using City land to build or subsidize affordable housing, create more resources, and provide more certainty and predictability in the City's processes. The major changes are as follows:

**Definitions.** The O.M.C. chapters would be updated to add definitions for "affordable housing," "very low-income households," "lower-income households," and "moderate-income households" consistent with State law and other City programs.

**Process for disposition to prioritize affordable housing.** As already stated in the O.M.C. (Chapters 2.42.040 and 2.42.160), the City must comply with all State laws, to the extent applicable, governing the disposition of property, including the Surplus Land Act. The Act requires that, for land no longer necessary for a City use, the City shall offer it first to housing sponsors and prioritize affordable housing. As recommended by the working group, O.M.C. section 2.42.170 that provides a process for disposition of property for development, would be amended to add new steps to elevate consideration of affordable housing. As proposed, prior to issuing a Notice of Development Opportunity ("NODO"), staff would first evaluate a site for its suitability for affordable housing development and then request a Council determination as to whether or not to seek offers for development of affordable housing, mixed-income housing, mixed-use, or commercial development. Staff's proposal would allow Council to evaluate the suitability of a site for affordable housing in comparison to possible other uses, such as market rate residential, mixed-income residential, or commercial development. If the site is most suitable for affordable housing development, then the NODO would solicit proposals specifically from affordable housing developers, using the City's "NOFA" list, i.e., the list that the Housing and Community Development Department use for soliciting funding proposals from affordable housing developers. If mixed-income residential or other uses are more suitable, then the NODO could seek proposals from other developers for other uses. (See proposed Section 2.42.170.B and F).

**Inclusionary requirement.** As recommended by the working group, the O.M.C. would be amended to require that any negotiated development project that includes market rate residential units must contain at least 15 percent of the units set aside as affordable to households that average 80 percent of AMI. For example, a 200 unit development would be required to have 30 affordable units, of which 15 could be at 60 percent of AMI and 15 could be at 100 percent of AMI. Projects with 200 or fewer units could be given an option to make a payment in-lieu of providing units on site, at a value equivalent to the estimated cost of providing the units. (The working group recommended a payment of \$20,000 per market rate unit; staff is proposing that the amount of the payment be adjusted to better match the cost to the developer to provide the affordable units in a given project under current market conditions, which may likely result in a greater in-lieu amount per market rate unit.) Credit would be given for units

provided or payment provided under the recently adopted housing impact fee ordinance. Staff is proposing language that would allow Council to consider a full or partial waiver of the inclusionary or payment requirement based on findings and a determination that it would make the project infeasible, or that the project would provide an equivalent or greater value of other community benefits in lieu of the affordable housing requirement. (See proposed Section 2.42.190.B).

**Set aside of disposition proceeds to AHTF.** As recommended by the working group, the O.M.C. would be amended to require that 30 percent of net unrestricted disposition proceeds be deposited in the AHTF to further the development of affordable housing. Net unrestricted proceeds would be after all transaction costs (i.e., appraisal fees, third party professional services costs, and escrow fees) are deducted. Under the staff proposal, any amounts earmarked by Council for another development use, such as reinvestment into public infrastructure or retained property interests, would also be deducted. This set-aside also would not apply if proceeds are restricted by statutory law, contract or bond covenants to a particular use or fund. (See proposed Section 2.42.185).

**Appraisal comparisons.** The O.M.C. would be amended to require staff to provide a comparison of a property's appraised value to other recent City land sales or purchases. Although the working group had recommended that all appraisals include this as a special section, staff believes this could unnecessarily add to the appraisal scope and cost, and could be difficult for an appraiser to ascertain the rationale for certain transaction values. Staff would be in a better position to address this on-going concern, particularly the characteristics and location of a given parcel and the status of the real estate market at the time of contemplated sale. (See proposed Section 2.42.060).

**Authority and transparency for below market leases for in-kind services.** The O.M.C. currently allows Council to approve below-market rate leases in exchange for in-kind services from the lessee, such as the social or cultural benefits the lessee provides to the community. The O.M.C. also currently gives the City Administrator authority to lease City real property for less than one (1) year. The O.M.C. would be amended to permit the City Administrator to approve similar below market leases in cases where the City Administrator already has delegated administrative authority to lease. This would facilitate the timely leasing and licensing of property to promote community benefits, such as the short-term licensing of City park and recreational facilities at a discounted rate to nonprofit groups that provide services and programs to the community. Also, a list of leases and licenses in which the City Council or the City Administrator have found and determined that the value of in-kind services provides a benefit to the City in lieu of payment of fair market rent, will be required to be posted on the City's website as an additional way to increase transparency. (See proposed Section 2.42.110).

**Lease term limitation.** This O.M.C. provision would be amended to refer to the City Charter provision that limits the term of a lease, rather than indicating a fixed term in the Code. Should the Charter provision be amended, this term would not need to be changed again. (See proposed Section 2.42.1300).

**Intent of facilitating sale, lease or disposition for development.** The O.M.C. would be amended to add "fiscal sustainability" as a City goal to be promoted through real property development, along with the existing listed economic development, housing, environmental, and

community development goals. This means that among the considerations in evaluating potential development on City-owned property would be the degree to which it generates long term revenue or reduces long term costs and/or liabilities. (See proposed Section 2.42.140).

Other suggested clean-up changes to these chapters of the O.M.C. include the following:

**Noticing.** Noticing of potential sales or leases would no longer be required in the City's official newspaper, which had been the Oakland Tribune until its recent discontinuation as an Oakland specific publication. Notice would continue to be required by posting on the City's website, along with other means -- perhaps on a case-by-case basis.

**Administrative authority.** The O.M.C. would make it clear that the provisions delegating administrative authority to staff to approve property sales, for instance, when the property has a fair market value of less than \$50,000, apply to the sale of property, notwithstanding the adoption of City Resolution No. 85324 C.M.S. regarding the general preference for leases over sales, which requires a Council finding before a property could be sold. A number of recent examples of small properties have demonstrated that under certain circumstances leases are infeasible, as in small lots in single family residential zones. (See proposed Section 2.42.050.D).

**City Administration building complex leases.** The O.M.C. would be amended to eliminate the previously established minimum and maximum lease rates and terms for leases in the City Administration buildings, defaulting to a new provision that all leases would be at fair market rates unless findings and determinations are made by City Council or City Administrator. (See proposed Section 2.42.230).

## **Policy Alternatives**

Council may wish to consider alternatives to the key provisions described above, such as:

- **Inclusionary requirement.** The working group recommended that residential development on City-owned land should include at least 15 percent of units at an average of 80 percent AMI. In light of the recent impact fee adoption, the intent was to set a higher standard for affordable housing contribution from development on City-owned land. These standards could be adjusted higher or lower – however, the balancing factor will be the amount of sale proceeds or rent the City can negotiate while maintaining project feasibility.

As a comparison for the public lands policy standard, the adopted impact fee for affordable housing ranges from \$0 to \$6,500 per market rate unit in year 1, increasing up to \$8,000 to \$23,000 per market rate unit in year 3, depending on housing type and geographic zone. The impact fee analysis highlighted the fact that different project types and market areas will have varying ability to absorb costs associated with providing affordable housing. The adopted impact fee legislation included an in-lieu option for on-site mitigation which is 5 percent of total units set-aside for very low-income households (50 percent of AMI), or 10 percent of total units for low- or moderate-income households (80 percent and 120 percent of AMI).



As another comparative policy, BART recently set a station-area goal that 20 percent of all residential units on BART property be affordable housing. A specific income level was not established and exceptions are allowed on a project-by-project basis based on feasibility. Yet another comparison is the City and County of San Francisco which, through passage of a ballot measure last Fall, updated its public lands policy such that for development on City-owned sites with capacity for 200 or more units, not less than 33 percent of units would be affordable to households at or below 120 percent of AMI. Of the affordable housing households, 15 percent of rental units must be at or below 55 percent of AMI and 15 percent of ownership units be at or below 90 percent of AMI.

The following table summarizes the aforementioned information:

**Comparison for public land policies**

	Oakland working group proposal	Oakland		BART	San Francisco		
		Impact Fee on-site option		Average for station area	If over 200 units, then	Of which (for rental)	Of which (for ownership)
% of units -->	15%	5%	10%	20% avg	33%	15%	15%
target AMI -->	80% avg	50%	80% or 120%	n/a	120%	55%	90%

- **Set-aside of disposition proceeds.** The working group recommended that 30 percent of net disposition proceeds be deposited in the AHTF. This was an increase from a recommendation that first appeared in the City Council-adopted "Roadmap Toward Equity" report to set aside 25 percent of proceeds for affordable housing, which itself was modeled after the City's adopted policy of depositing 25 percent of Redevelopment "boomerang funds" into the AHTF.

An alternative to the working group recommendation is to set a lower minimum requirement (for example, 10 percent of disposition proceeds), subject to a higher percentage after Council reviews other fiscal priorities.

**FISCAL IMPACT**

The recommended O.M.C. changes could result in lower sales proceeds being realized on properties that would now require more inclusionary affordable housing than may otherwise have been negotiated. Net disposition proceeds available for General Purpose Fund services could be reduced by as much as 30 percent; however, the AHTF would be increased and allow the City to leverage more support for affordable housing development. Potential lease revenues to the City could also be lower over time, given other policy priorities that the City may wish to implement that would result in below market rate rents.

## **PUBLIC OUTREACH / INTEREST**

The public lands working group included 15 stakeholders from a variety of organizations. The recommendations were also reviewed by the Mayor's Housing Cabinet, which involved an additional 15 community stakeholders. The working group recommendations were distributed through publication of the Housing Cabinet's report, "Oakland at Home."

## **COORDINATION**

This report and the proposed O.M.C. amendments have been prepared in consultation with the Economic & Workforce Development Department and the City Attorney's Office, and evaluated by the Mayor's Housing Cabinet Public Lands Working Group. The report was reviewed by the Budget Office and the City Administrator's Office.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The O.M.C. amendments will allow the City to continue to promote economic development goals today through the development of its properties. The amendments will also increase transparency and expectations regarding development projects and the opportunity to increase the supply of affordable housing from use of public lands.

***Environmental:*** The O.M.C. amendments will allow the City to continue to expand options to promote new development that will be required to meet the current high standards for sustainable development including the City's Green Building Ordinance for Private Development Projects. Most of the City sites for development are appropriate for higher density transit oriented development near Bay Area Rapid Transit ("BART") Stations or along major Alameda-Contra Costa Transit District bus lines on commercial corridors.

***Social Equity:*** The O.M.C. amendments would expand the opportunity to develop affordable housing and provide additional resources to promote affordable housing projects.

**CEQA** This action of amending the Municipal Code regarding real estate disposition policies does not have any potential environmental effects and is exempt from CEQA under Sections 15061(b)(3)(general rule, which exempts activities that can be seen with certainty to have no possibility for causing a significant effect on the environment), 15301(existing facilities), 15378(b)(5)(administrative activities of government that will not result in direct or indirect physical changes in the environment), 15162 (projects consistent with general plan and zoning) and 15262 (feasibility and planning studies).

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The Council Receive This Informational Report And Take Possible Action Directing Staff To Prepare The Necessary Legislation To Implement An Updated Public Lands Policy.

For questions regarding this report, please contact me at [msawicki@oaklandnet.com](mailto:msawicki@oaklandnet.com) or 510.238.2992.

Respectfully submitted,



MARK SAWICKI  
Director, Economic & Workforce  
Development Department

**Attachments (3):**

- A. Redline version of Municipal Code Chapters 2.41 and 2.42
- B. Excerpt from Housing Action Plan
- C. Excerpt from Housing Cabinet Report "Oakland at Home"

## Chapter 2.41 - ACQUISITION AND LEASE OF REAL PROPERTY BY CITY

Footnotes: --- (3) --- **Editor's note**—Ord. No. 13287, § 2, adopted Jan. 6, 2015, repealed the former Ch. 2.41, §§ 2.41.010—2.41.080, and enacted a new Ch. 2.41 as set out herein. The former Ch. 2.41 pertained to disposition of city-owned property for development and derived from Ord. No. 13185, § 2, adopted July 30, 2013.

### 2.41.010 - Definitions.

The following words and phrases, wherever used in this chapter, shall be construed as defined in this section unless otherwise required by the context. The singular shall be taken to mean the plural and the plural shall mean the singular when required by the context of this chapter. The following definitions apply to this chapter:

"Acquisition of real property" or "acquire real property" for purposes of this chapter and Section 219(6) of the Charter means the purchase or other acquisition by the City from another of a fee simple interest in real property, with or without consideration, by grant deed, quitclaim, trustee's deed, deed in lieu of foreclosure, court order, or other transfer; but does not include the acquisition of a leasehold interest, easement, equitable servitude right-of-way, option interest, security interest, or other estate in real property less than a fee simple interest, or acquisition by civil forfeiture. Notwithstanding the above, the acquisition of a leasehold interest for a term or lease period exceeding thirty-five (35) years, including any extension or renewal periods if the extension or renewal is exercisable at the unilateral option of the City, shall be treated as acquisition of real property.

"Lease" means the conveyance to the City of a leasehold estate, rental, license or other exclusive or nonexclusive right under a less than fee simple estate for the City or its designee to use or occupy real property for a set term, periodic term such as month-to-month, or at will, with or without the payment of rent, lease payments, license fees, or other consideration; but does not include an easement or equitable servitude. A "lease" includes a sublease or an assignment of a lease to the City.

"Purchase price" means the total consideration given or provided by the City to the seller or on behalf of the seller in exchange for the purchase or other acquisition, whether paid in cash, cash equivalent, in-kind consideration, exchange, credit, or anything else of value to the City.

"Real property" means land, buildings, structures and other fixtures or immovable property affixed to the land.

### 2.41.020 - Authority for acquiring real property.

The City is authorized to acquire real property by grant, purchase, gift, devise, contract, or eminent domain. Per Section 219(6) of the Charter, all acquisitions of real property by the City must be authorized by an ordinance enacted by the City Council, except as provided for below.

Notwithstanding the above, the City Administrator is delegated the full and complete authority to acquire any real property if the purchase price for the real property does not exceed one hundred thousand (\$100,000.00). The City Administrator is authorized to negotiate and execute all documents necessary for the acquisition of such real property and take other actions necessary to complete such acquisition, provided that the funds have been appropriated for the acquisition. No further City Council action is required for such acquisitions.

### 2.41.030 - Title.

Any deed or grant conveying real property to the City must include a certificate of acceptance signed by the City Administrator or his or her designee accepting said real property.

Title to any real property acquired by the City shall be held in the name of "The City of Oakland, a municipal corporation."

**2.41.040 - Acquisition of real property by eminent domain.**

The City has the right and power to acquire real property for a public use through eminent domain. Acquisition of real property through the City's power of eminent domain must conform to the provisions of the California Eminent Domain Law, California Code of Civil Procedure Sections 1230.010, et seq., and other applicable state and federal law provisions. Notwithstanding anything to the contrary in this chapter, acquisition of real property through the use of the City's power of eminent domain shall be authorized by Council adoption of a resolution of necessity pursuant to California Code of Civil Procedure Section 1245.210, et seq., and shall not require an ordinance.

**2.41.050 - Lease of real property by City.**

The City is authorized to lease real property from another entity. All leases of real property by the City must be authorized by a resolution enacted by the City Council, except as provided for below. The City may acquire leasehold interests through eminent domain.

Notwithstanding the above, the City Administrator is delegated the full and complete authority to lease any real property if the rent, lease payments, license fees, or other consideration for the lease does not exceed one hundred thousand (\$100,000.00) over the term of the lease, including any extension periods authorized under the lease. The City Administrator or his or her designee is authorized to negotiate and execute all documents necessary for the lease of such real property and take other actions necessary to complete such lease, provided that the funds have been appropriated for the lease. No further City Council action is required for such leases.

**2.41.060 - Acquisition of easements.**

The City is authorized to acquire easements, equitable servitudes, and right-of-way interests in real property by grant, purchase, gift, devise, contract, or eminent domain. This shall include the acquisition of negative easements such as conservation easements. Per Section 219(6) of the Charter, all such acquisitions must be authorized by an ordinance enacted by the City Council, except as provided for below.

Notwithstanding the above, the City Administrator is delegated the full and complete authority to acquire any easements, equitable servitudes, and right-of-way interests in real property if the purchase price for such interest does not exceed one hundred thousand (\$100,000.00). The City Administrator or his or her designee is authorized to negotiate and execute all documents necessary for the acquisition of such interests and take other actions necessary to complete such acquisition, provided that the funds have been appropriated for the acquisition. No further City Council action is required for such acquisitions.

**2.41.070 - Right-of-way certifications.**

The City Administrator or his or her designee is hereby authorized to execute all right-of-way certifications and similar documents certifying that all property rights needed for federally-funded projects have been acquired and that the projects have qualified for the receipt of federal funds.

**2.41.080 - Gifts of real property.**

Any gifts or donations of real property to the City shall be governed by Section 2.04.160 and any regulations adopted pursuant to said provision by the City Administrator. For purposes of applying the limit on delegated authority to accept gifts as set forth in said provision, the fair market value (as defined in Section 2.42.010) of the real property being donated shall be considered.

**2.41.090 - Implementation.**

The City Administrator is authorized to implement this chapter and may promulgate appropriate rules, regulations or guidelines for such purposes.

## Chapter 2.42 - DISPOSITION OF REAL PROPERTY BY CITY

### Article I - General Provisions

#### 2.42.010 - Definitions.

The following words and phrases, wherever used in this chapter, shall be construed as defined in this section unless otherwise required by the context. The singular shall be taken to mean the plural and the plural shall mean the singular when required by the context of this chapter. The following definitions apply to this chapter:

"Affordable housing" means housing that is provided at an affordable rent or an affordable housing cost to moderate-income households, lower-income households or very low-income households. The terms "affordable rent" and "affordable housing cost" shall be as defined in California Health and Safety Code Sections 50053 and 50052.5 and their implementing regulations. Such housing shall have terms of affordability equivalent to those prescribed in California Health and Safety Code Sections 33334.3(f)(1)(A) for rental housing and 33334.3(f)(1)(B) for owner occupied housing.

"City Administration Building Complex" means, collectively, the Lionel J. Wilson Building (150 Frank H. Ogawa Plaza), the Dalziel Building (250 Frank H. Ogawa Plaza), the Plaza Building (200 Frank H. Ogawa Plaza), City Hall (One Frank H. Ogawa Plaza), Frank H. Ogawa Plaza, and City Center West Garage (1250 Martin Luther King, Jr., Way).

"Development" means the new construction of buildings or other facilities, or the substantial rehabilitation of existing buildings or other facilities.

"Disposition" means the sale, lease or any other form of property disposition.

"Fair market value" means the amount that a willing buyer would pay a willing seller for the real property, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts, in an open and competitive market under all conditions requisite to the sale, and considering the property's highest and most profitable use.

"Fair market rental value" means the rental income that a real property would most likely command on the open market. Said rent shall be supported by a review of current rents paid, and asked, for comparable property and/or space.

"Fair reuse value" means the amount that a willing buyer would pay a willing seller for the real property, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts, considering the proposed use of the property and the sale or rental value of the property with the conditions, covenants, restrictions, and development costs associated with the negotiated disposition and development.

"Lease" for purposes of this chapter and Section 219(6) of the Charter means the grant by the City of a leasehold estate, rental, license, or other exclusive or nonexclusive right under a less than fee simple estate to use or occupy real property owned by the City for a set term, periodic term such as month-to-month, or at will, with or without the payment of rent, lease payments, license fees, or other consideration; but does not include an easement, equitable servitude, or franchise. A "lease" includes a sublease or an assignment of a lease by the City.

"Lower-income households" shall be as defined in California Health and Safety Code Section 50079.5 and its implementing regulations.

"Moderate-income household" means persons and families of low or moderate income as defined in California Health and Safety Code Section 50093 and its implementing regulations.

"NODO" means a Notice of Development Opportunity. For purposes of this chapter, a "NODO" also includes a Request for Proposals ("RFP"), Request for Qualifications ("RFQ"), or any other public solicitation of proposals, bids, offers, or statements of interest for acquiring and developing real property.

"Sale", "sell", "conveyance" or "convey" for purposes of this chapter and Section 219(6) of the Charter means the sale, grant, contribution or other voluntary disposition by the City to another of a fee simple interest in real property, with or without consideration, by grant deed, quitclaim, deed in lieu of foreclosure, or other transfer; but does not include a lease, license, or grant of a leasehold interest, easement, equitable servitude, option interest, security interest, or other estate in real property less than a fee simple interest. Notwithstanding the above, the conveyance of a leasehold interest for a term or lease period exceeding thirty-five (35) years, including any extension or renewal periods if the extension or renewal is exercisable at the unilateral option of the lessee, shall be treated as the sale of real property for purposes of this chapter.

"Substantial rehabilitation" means rehabilitation, the value of which is twenty-five (25%) or more of the after-rehabilitation value of the building or facility inclusive of land value.

"Real property" means land, buildings, structures and other fixtures or immovable property affixed to the land.

"Telecommunications facility" means an installation of equipment for the transmitting and receiving of radio frequencies, including the attachment of antennas to buildings and ether structures, and the construction of ancillary support structures for such equipment, and the placement of any vaults, pedestals, fiber, conduit, and other equipment, structures, or facilities for voice, video, or data transmission within the City rights-of-way or on or under any City street. The term "telecommunications facility" shall include any "micro facility," "mini facility," "macro facility," "monopole," or "tower," as these terms are defined in Section 2700, et seq., of the Oakland Planning Code.

"Undeveloped" means real property that is unimproved land, a surface parking lot, or otherwise not improved with permanent buildings or structures.

"Very low-income households" shall be as defined in California Health and Safety Code Section 50105 and its implementing regulations.

#### **2.42.020 - Implementation.**

The City Administrator is authorized to implement this chapter and may promulgate appropriate rules, regulations or guidelines for such purposes.

## **Article II - Sale of City-Owned Real Property, Generally**

#### **2.42.030 - Applicability.**

This Article shall apply to all sales of real property by the City, except for the sale of real property for development. The sale of real property for development shall be governed solely by Article IV below.

#### **2.42.040 - Compliance with state laws.**

The City shall comply with all state laws, to the extent applicable, governing the sale of real property, including the Surplus Lands Act (California Government Code Section 54220, et seq.).

Prior to soliciting bids from other entities for surplus land, the City shall send written offers to sell or lease surplus land to the entities entitled to such offers under the Surplus Land Act, including offers seeking proposals from nonprofit housing providers and other housing sponsors to develop ~~for the purpose of developing~~ housing where at least twenty-five percent (25%) of the units are affordable to persons of low or moderate income, ~~including nonprofit housing providers~~. The City shall offer such housing providers first priority for ninety (90) days to negotiate for the purchase or lease of the property for the development of affordable housing.

#### **2.42.050 - Process for selling City real property.**

- A. **Competitive Process.** No real property shall be sold by the City except after calling for oral or written competitive bids or offers, unless the competitive process has been waived as provided for below. Each solicitation for written competitive bids or offers shall contain the following:
1. The time and place bids or offers are to be received.
  2. The minimum acceptable bid or offers on each parcel.
  3. A description of each parcel.
  4. The amount and type of deposit required of the successful bidder or offeror. Said deposit shall be retained by the City if the successful bidder or offeror fails or refuses to complete the transaction.
  5. When the balance of the bid or offer price must be paid.

Oral competitive bids or offers may be received through a public auction process or other competitive process.

Notice of the proposed sale and competitive process shall be ~~published in the official newspaper of the City or~~ posted on the City's website. Bids or offers shall be received in public at the time and place specified in the notice calling for bids or offers. The sale, if accepted by the City Council, shall be awarded to the highest bidder or offeror meeting the conditions specified in the notice calling for the sale of the property. The City Council shall have the right to accept or reject any and all bids or offers. If the highest bidder or offeror fails or refuses to complete the transaction, the property may subsequently be sold through negotiation to the next highest bidder or offeror willing to meet the same minimum advertised terms and conditions.

If no bids or offers are received after advertising the property as required by this chapter, the real property may subsequently be sold through negotiation, subject to the approval of the City Council if required.

- B. **Waiver of Competitive Process.** Notwithstanding the above, the requirement to undertake a competitive process and to post notice of the proposed sale shall not apply to any of the following circumstances:
1. The real property is to be sold to another public agency or entity which has the power of eminent domain;
  2. The real property is undeveloped and less than five thousand (5,000) square feet in land area;
  3. The real property has a fair market value of one hundred thousand (\$100,000.00) or less;
  4. The City Council has made a finding and determination that calling for bids or offers on a competitive basis is impractical, unavailing or impossible; or
  5. The City Council has made a finding and determination that it is in the best interests of the City to sell the real property by negotiated sale.
- C. **Approval by Ordinance.** Per Section 219(6) of the Charter, all sales of real property by the City must be authorized by an ordinance enacted by the City Council, except as provided below.
- D. **Administrative Authority.** Notwithstanding the above or the general City policy favoring leases over sales as set forth in Resolution No. 85324 C.M.S., the City Administrator or his or her designee is delegated the full and complete authority to sell City real property in any of the following circumstances:
1. The sale is required by an agency of the state or federal government;
  2. The real property has a fair market value of \$50,000.00 or less; or
  3. The real property was formerly owned by the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") or the Oakland Redevelopment Successor Agency ("ORSA"), and the Redevelopment Agency or ORSA governing body delegated the authority to sell the real property to the administrative staff of the respective agency by resolution.



The City Administrator or his or her designee is authorized to negotiate and execute all documents necessary for the sale of such real property and take other actions necessary to complete such sale. No further City Council action is required for such sales.

#### **2.42.060 - Sale price.**

Real property must be sold for a price, payable in cash or other consideration, equal to or exceeding the property's fair market value as determined by an appraisal, unless either (1) the City Council has made a finding and determination that the sale of the property for less than fair market value is in the best interests of the City, or (2) a state or federal government agency requires the sale of the property for less than fair market value. The staff analysis for the sale presented to the City Council must include a comparison of the subject property's value compared to other recent City property acquisitions and dispositions.

#### **2.42.070 - Restrictions on sales to City officials.**

The following enumerated officers and employees of the City may not as principal, agent, attorney or otherwise, be directly or indirectly interested in the sale of any City-owned real property: Mayor, members of the City Council, members of the City Planning Commission, City Auditor, City Attorney, City Administrator, City Clerk, Director of Finance, Director of City Planning, Director of Planning and Building, Director of Public Works, Real Estate Services Manager, employees of the Real Estate Division, and any other City employee who, because of his or her position with the City, has a potential conflict of interest or a potential advantage over other potential purchasers.

#### **2.42.080 - Grant of easements.**

The City is authorized to grant temporary and permanent easements, including equitable servitudes and right-of-way interests, for access to or use of City real property. This shall include the grant of negative easements such as conservation easements. Per Section 219(6) of the Charter, all such grants must be authorized by an ordinance enacted by the City Council, except as provided for below.

Notwithstanding the above, the City Administrator is delegated the full and complete authority to grant any temporary or permanent easements for access to or use of City real property without Council authorization in any of the following circumstances:

1. The grant of easement is required by an agency of the state or federal government;
2. The easement area is less than five thousand (5,000) square feet;
3. The easement has a fair market value of one hundred thousand (\$100,000.00) or less; or
4. The easement period is for one year or less.

The City Administrator or his or her designee is authorized to negotiate and execute all documents necessary for the grant of such easements and take other actions necessary to complete such grant. No further City Council action is required for the grant of such easements.

Any grant of easement must be in exchange for a price, payable in cash or other consideration, equal to or exceeding the fair market value of the easement conveyed as determined by an appraisal, unless (1) the City Council has made a finding and determination that the grant of easement for less than fair market value is in the best interests of the City, or (2) a state or federal government agency requires the grant of easement for less than fair market value.

#### **2.42.085 – Set-aside of sales proceeds for affordable housing.**

At least thirty percent of any net unrestricted proceeds received by the City from the sale of City real property under this Article shall be deposited into the Affordable Housing Trust Fund established under Chapter 15.62 of this Code. For purposes of this section, "net unrestricted proceeds" shall mean those cash proceeds received by the City, net of transaction costs, that are not restricted by statutory law.

contract, or bond covenants to a particular use or special fund or that were not earmarked for another development use by the City Council when the sale was approved.

### **Article III - Lease of City-Owned Real Property, Generally**

#### **2.42.090 - Applicability.**

This Article shall apply to all leases of City-owned real property by the City, except for the lease (including ground lease) of real property for development, or the special leases or licenses set forth in Article V below. The lease of real property for development shall be governed solely by Article IV below. Special leases or licenses shall be governed by the applicable specific provisions set forth in Article V below.

#### **2.42.100 - Process for leasing City real property.**

- A. Notice. Notice of the proposed lease of City real property for a term exceeding one year shall be published in the official newspaper of the City or posted on the City's website, unless the City Administrator or designee elects to list the property with a broker or listing service.
- B. Approval by Ordinance. Per Section 219(6) of the Charter, all leases of City-owned real property by the City must be authorized by an ordinance enacted by the City Council, except as provided below. An ordinance may authorize a specific lease of a specific City property, or may authorize general leasing of City property by the City Administrator under parameters provided for in the ordinance.
- C. Administrative Authority. Notwithstanding the above, the City Administrator or his or her designee is delegated the full and complete authority to lease City real property in any of the following circumstances:
  1. The lease is required by an agency of the state or federal government;
  2. The lease is for real property that is undeveloped and less than five thousand (5,000) square feet in land area;
  3. The lease is for less than two thousand (2,000) square feet of leasable space;
  4. The real property was formerly owned by the Redevelopment Agency or ORSA, and the Redevelopment Agency or ORSA governing body delegated the authority to lease the real property to the administrative staff of the respective agency by resolution; or
  5. The lease is for a term of one (1) year or less. For purposes of this subsection, the term shall be calculated based on the maximum lease term the lessee may claim under the terms of the lease without City approval, including unilateral options on the part of the lessee to extend or renew the term. The execution of a month-to-month lease, a lease with a lease term of one (1) year or less that includes an option on the part of the City to extend the lease term past one (1) year, or an agreement or exercise of option to extend a lease term past one (1) year shall not require Council approval, if, after the first year of the lease term, the lease permits the City to terminate the lease unilaterally for any reason upon notice of thirty (30) days or less.

The City Administrator or his or her designee is authorized to negotiate and execute all documents necessary for the lease of such real property and take other actions necessary to complete such lease. No further City Council action is required for such leases.

#### **2.42.110 - Rent.**

Real property must be leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property's fair market rental value, unless the City Council has made a finding and determination that the lease of the property for less than its fair market rental value is in the best interests of the City, or, in the case of leases with delegated administrative authority under Section 2.42.100.C, the

City Administrator or his or her designee has made a determination that the lease of the property for less than its fair market rental value is in the best interests of the City. In the case of lessees who provide in-kind services in lieu of cash rent, the value of such in-kind services to the City or the community at large may be considered in making the required Council or City Administrator finding and determination. For purposes of this chapter, in-kind services include benefits or values the provider renders to the City or the community at large as a result of the tenancy in lieu of payment of cash. This may include, but not be limited to, property security and maintenance, social, cultural, or recreational benefits to the community, or other appropriate services. A list of all such leases in which the Council or the City Administrator has made such findings and determinations shall be posted on the City's website indicating both the rent and in-kind services, benefits or values the tenant provides.

#### **2.42.120 - Restrictions on leases to City officials.**

The following enumerated officers and employees of the City may not as principal, agent, attorney or otherwise, be directly or indirectly interested in the lease of any City-owned real property: Mayor, members of the City Council, members of the City Planning Commission, City Auditor, City Attorney, City Administrator, City Clerk, Director of Finance, Director of City Planning, Director of Planning and Building, Director of Public Works, Real Estate Services Manager, employees of the Real Estate Division, and any other City employee who, because of his or her position with the City, has a potential conflict of interest or a potential advantage over other potential lessees.

#### **2.42.130 - Limitations on lease term.**

~~Per Section 1001 of the Charter, no~~ No lease of City real property may be for a term greater than ~~sixty six(66) years~~ the maximum term authorized under the Charter.

### **Article IV - Sale or Lease of City-Owned Real Property for Development**

#### **2.42.140 - Intent and application.**

This article is intended to facilitate the City's sale, lease, or disposition of real property for development to promote the economic development, housing, environmental, ~~and~~ community development and fiscal sustainability goals of the City under the procedures set forth in this article. Any sale, lease, or other disposition of City-owned real property that conditions the transaction on the development of the property by the purchaser or tenant shall be governed by this article.

#### **2.42.150 - Authority.**

The City Administrator shall have the authority to make the initial determination whether a property should be conveyed for development under this article, or under other disposition provisions in this chapter.

#### **2.42.160 - Compliance with State laws, if applicable.**

The City shall comply with the Surplus Lands Act (California Government Code Sections 54220, et seq.) if and to the extent applicable to the disposition of the property. Should the property be intended for development as affordable housing, the City shall also comply with California Government Code Sections 37362, et seq., if and to the extent applicable.

#### **2.42.170 - Process for disposition of property for development.**

- A. The City Administrator shall market the real property by issuing a public and competitive NODO to potential developers and other interested parties. The NODO shall request potential developers and other interested parties to submit written purchase or leasing and development proposals for the property.

- B. Prior to issuance of a NODO for property that is suitable for the development of 20 residential units or more, based on the property's physical capacity and current zoning as determined by the City Administrator, the City Administrator shall evaluate and make a recommendation to the City Council concerning the suitability of the property for development for affordable housing relative to its suitability for other uses, including commercial uses, market rate residential use, mixed-income residential use, or mixed-use. Such evaluation shall consider, among other things, (1) the suitability of the property as a site for multifamily residential use relative to other uses, (2) its proximity to public transit and amenities, (3) its relative competitiveness for state and federal affordable housing funds and tax credits, and (4) the relative benefits to the City and the community of development of uses other than affordable development, given the City's land use, economic development and housing policies and goals, as well as fiscal considerations.
1. If the City Council determines that the property is most suitable for development for affordable housing, the NODO shall be sent to the list of affordable housing developers maintained and used by the City to solicit funding proposals for affordable housing projects, and shall ask for written proposals for affordable housing projects.
  2. If the City Council determines that the property is most suitable for development with a mix of affordable housing and other uses, the NODO shall be sent to affordable housing developers and other developers, and shall ask for written proposals for projects with a mix of affordable housing and other uses.
  3. If the City Council determines that the property is most suitable for development for uses other than affordable housing, the NODO shall be sent to developers seeking written proposals for projects with those uses.
- C. Notwithstanding the above, the City Administrator may elect to waive the competitive NODO process and negotiate a disposition transaction with a selected developer, if the City Administrator determines that (1) disposition through a competitive NODO process is impractical, or (2) disposition through a process other than a competitive NODO process is otherwise in the best interests of the City. The City Administrator must explain the basis for any such waiver when he or she presents the proposed disposition to the City Council, and the City Council shall make findings in support of any waiver of the NODO process as a condition to approving any transaction.
- D. In evaluating development proposals for real property under this article, the City Administrator may consider, without limitation, in addition to price any of the following factors:
1. The value of the proposed use of the real property to the community and the City as a whole.
  2. The compatibility of the proposed development and use with current zoning and community plans applicable to the real property.
  3. The compatibility of the proposed development and use with the character of the surrounding neighborhood.
  4. The experience, capacity and financial resources of the proposed developer.
  5. The quality of project design.
  6. The environmental sustainability of the proposed development.
  7. Community and public objectives achieved by the proposed development, such as creating jobs, expanding the tax base, providing other fiscal benefits, providing needed commercial or social services, providing or improving needed infrastructure, increasing, improving or preserving the stock of housing affordable to low and moderate income households, eliminating physical or economic blight, and contributing to the economic vitality of the neighborhood.
  8. Other factors, as the City Administrator may deem applicable.
- E. Following his or her evaluation of development proposals, the City Administrator shall make his or her recommendations as to the proposed development and the terms and conditions of one (1) proposed development to the City Council. The City Council may evaluate the City Administrator's

recommended development proposal and any other proposals based on the considerations set forth above.

- F. In evaluating proposals for affordable housing submitted pursuant to a NODO issued under subsection B, the City Administrator shall consider proposals to purchase the property at its fair market value, fair rental value, or fair reuse value. Should the City receive no proposals for an affordable housing project pursuant to a NODO issued under subsection B, or should none of the proposals for affordable housing submitted pursuant to subsection B be feasible or be responsive to the evaluation factors listed above, as determined by the City Administrator in his or her reasonable judgment, the City Administrator, with the concurrence of the City Council, may issue another NODO under subsection A requesting proposals with or without an affordable housing component. For purposes of this paragraph, "feasible" shall mean the project is being proposed by a reputable developer with experience developing an affordable housing project of similar type and scale as the proposed project, and the project proposal identifies adequate funding sources for project development.
- G. Per the City Charter, any such approval of a lease (longer than one year) or a sale of the property requires a Council ordinance.

**2.42.180 - Disposition price.**

- A. The real property may be disposed of either at its fair market value, fair rental value, or at its fair reuse value, based on the City's assessment of the proposed development and use, prevailing market conditions and development climate at the time of disposition, and other economic and noneconomic factors. The City Administrator shall complete an analysis of the property's fair market value, fair rental value, or fair reuse value, as applicable, in determining an appropriate disposition price.
- B. The ordinance authorizing the disposition of the real property shall include either a finding that the property is being conveyed at its fair market value or fair rental value; or, if the property is being conveyed for less than fair market value or fair rental value, a finding that the property is being conveyed at its fair reuse value with the reasons for the below-market conveyance.
- C. The City shall comply with the procedures set forth in California Government Code Sections 52201, et seq., and California Government Code Sections 53083, et seq., to the extent applicable to the disposition of the real property for development.
- D. If the property is being conveyed at less than fair market value or fair rental value, all City employment and contracting programs pertaining to subsidized projects shall apply.

**2.42.185 – Set-aside of disposition proceeds for affordable housing.**

At least thirty percent of any net unrestricted proceeds received by the City from the disposition of City real property under this Article shall be deposited into the Affordable Housing Trust Fund established under Chapter 15.62 of this Code. For purposes of this section, "net unrestricted proceeds" shall mean those cash proceeds received by the City, net of transaction costs, that are not restricted by statutory law, contract, or bond covenants to a particular use or special fund or that are not earmarked for another development use by the City Council when the disposition is approved.

**2.42.190 - Agreements to Effectuate Intent of Negotiated Development.**

- A. Any disposition of real property pursuant to this article shall be conditioned on the development and use of the property as negotiated. The City and the purchaser shall enter into a disposition and development agreement, lease disposition or development agreement, or similar agreement governing the transaction. Such agreement shall set forth the terms and conditions of the disposition of the property, the obligations of the purchaser to develop the agreed-upon project, and any long-term restrictions on the use of the property. The agreement may contain covenants or conditions running with the land, and may include rights of reverter, repurchase rights, termination rights, or other provisions securing the satisfactory performance of development covenants and other purchaser obligations.

- B. Any such agreement for a project that includes market rate residential units shall require that at least fifteen percent of units be provided as affordable housing. For purposes of this paragraph, a project is in compliance if the units set aside as affordable housing average an affordable rent or affordable sales price to households at or below 80 percent of area median income. For example, a project of 200 total units that is required to set aside 30 units as affordable housing is in compliance if 15 units are affordable to households at 100 percent of area median income and 15 units are affordable to households at 60 percent of area median income. Notwithstanding the above, for projects with 200 residential units or fewer, the agreement may provide for a payment to the Affordable Housing Trust Fund in lieu of providing affordable housing units in an amount equivalent to the net cost to the developer of providing affordable units on-site as negotiated by the City Administrator and the purchaser. The project shall be given credit for any affordable housing units provided or payments made into the Affordable Housing Trust Fund pursuant to California Government Code Section 54233 or Chapter 15.72 of this Code. The City Administrator may recommend, and Council may consider, a full or partial waiver of these affordable housing requirements if there is a finding and determination that the requirements would render the project infeasible, or that the project will provide an equivalent or greater value of other community benefits in lieu of affordable housing.
- C. The City Administrator is authorized to negotiate and execute agreements and to take whatever other action is necessary with respect to the approved development. The City Attorney shall review and approve all documents and agreements related to the transaction as to form and legality, and a copy shall be placed on file with the City Clerk.

## Article V - Special Licenses and Leases

### 2.42.200 - Parking licenses in the Central District.

- A. Pursuant to Section 219(6) of the City Charter the City Administrator or his or her designee is authorized, in his or her discretion, to grant licenses for parking facilities owned by the City in the Central District Redevelopment Project Area, subject to the limitations set forth below. The City Administrator or his or her designee is delegated the full and complete authority to enter into agreements, without further specific City Council action, as needed to grant such licenses, and to conduct related activities consistent with the purposes of this section.
- B. The above delegation of authority is subject to the following parameters:
1. The authority to grant licenses under this section is restricted to a cumulative maximum of 200 spaces per licensee;
  2. Licenses must be at the prevailing market rate, as determined by the City Administrator or his or her designee;
  3. Licenses may not be assignable by the licensee;
  4. The City may retain the option to change the assigned parking facility;
  5. The maximum term of any license agreement may not exceed ten (10) years with two (2) five-year extensions at licensee's option; and
  6. The license must be revocable by the City for just cause.

Any City license agreements exceeding one (1) year that do not conform to these parameters must be approved by the City Council. In addition, parking licenses granted pursuant to disposition and development agreements shall continue to be subject to Council approval.

- C. The Council finds and determines that, because of the unique nature of the parking licenses and the need to expedite the process for approving the use of City real property in order to serve the City's business retention and attraction goals and to maximize revenue, it is in the best interests of the City not to require competitive bidding for the use of City property for parking licenses. Therefore, the

provisions of this chapter related to competitive process for leasing or licensing real property shall not be applicable to the licensing of City parking spaces under this section. All procedural requirements in other sections of the chapter are hereby superseded in favor of the requirements of this section with respect to the licensing of City parking spaces under this section.

- D. All licenses and other agreements entered into pursuant to this section shall be reviewed and approved by the Office of the City Attorney prior to City execution.

#### **2.42.210 - Telecommunications leases and licenses.**

- A. Pursuant to Section 219(6) of the City Charter, the City Administrator or his or her designee is authorized, in his or her discretion, to grant licenses, enter into leases, or convey easements with respect to any real property owned by the City, or any real property in which the City holds a property interest, or any public right-of-way within the City of Oakland, to be utilized for the placement of telecommunications facilities. Said use must be consistent with the standards and requirements set forth in Ordinance No. 11904 C.M.S. and the Oakland Planning Code with respect to telecommunications facilities, as well as state and federal law governing these uses. The City Administrator or his or her designee is granted the full and complete authority to enter into agreements, without further specific City Council action, as needed to lease, convey easements, or grant licenses with respect to City property or City rights-of-way for the placement of telecommunications facilities consistent with this section, and to conduct related activities consistent with the purposes of this section. Any lease, license or grant of easement of City property or City right-of-way for a telecommunications facility must be for an amount at least equal to the market value of the interest conveyed, as determined by the City Administrator or his or her designee. A lease, license, or grant of easement of City property authorized under this section is in addition to any permit and/or inspection fees otherwise applicable to the project.
- B. The City Administrator or his or her designee shall submit annual reports to the City Council on City real property and City rights-of-way that have been leased, licensed, or conveyed for telecommunications facilities pursuant to this section.
- C. The Council finds and determines that, because of the unique nature of the siting of telecommunications facilities and the need to expedite the process for approving the use of City real property and City rights-of-way in order to encourage the growth of the telecommunications industry in Oakland, and because the Oakland Planning Code includes detailed standards regulating this use to protect public health, safety, and welfare, it is in the best interests of the City not to require competitive bidding for the use of City property or City rights-of-way for telecommunications facilities. Therefore, the provisions of this chapter related to competitive process for leasing or licensing real property shall not be applicable to the lease, license or conveyance of easements with respect to City real property (whether surplus or non-surplus) or City rights-of-way for telecommunications facilities. All procedural requirements in other sections of the chapter are hereby superseded in favor of the requirements of this section with respect to the lease, license or conveyance of easements for telecommunications facilities.
- D. All leases, licenses, deeds, and other agreements entered into pursuant to this section shall be reviewed and approved by the Office of the City Attorney prior to City execution.
- E. The scope of this section shall be limited solely to the use of City property and City rights-of-way for the siting of telecommunications equipment and infrastructure, and shall not govern the use of City property or City rights-of-way for office or other uses, even if those uses may be associated with telecommunications activities.

#### **2.42.220 - Headstart leases.**

- A. The City Administrator or his or her designee is authorized to negotiate and execute all documents required to enter into lease agreements for the Head Start and Even Start programs, including without limitation leases for terms greater than one (1) year, provided that the necessary federal funds have been awarded and appropriated and are available to cover lease expenses and other related costs.

- B. The City Administrator or his or her designee, for unforeseen contingencies, is authorized to modify, make changes to, or amend said leases, provide that any additional cost thereof is covered by appropriated funds.

**2.42.230 - City Administration Building Complex leases.**

- A. The City Administrator or his or her designee is authorized to negotiate and execute tenant leases for space in the City Administration Building Complex. The City Administrator or his or her designee is granted the full and complete authority to enter into agreements, without further specific City Council action, as needed to lease said space and to conduct related activities consistent with the purposes of this section.
- B. Such space must be leased for a rent or fee equal to or exceeding the fair rental value of the space. Notwithstanding the above, such space may be leased at less than its fair rental value if the City Council, or, in the case of leases with delegated administrative authority under Section 2.42.100.C, the City Administrator or his or her designee, makes the findings and/or determinations required under Section 2.42.110.
- B. ~~The City Administrator may only execute leases under this section that fall within the following parameters:~~
  - 1. ~~Applicable leases for the Dalziel Building and the Plaza Building shall be in compliance with the Wetmore/Pardee Relocation Agreement dated April 20, 1995.~~
  - 2. ~~Minimum monthly triple net rent for non-Wetmore/Pardee Relocation Agreement retail tenants in the Dalziel Building shall be not less than one dollar and twenty five cents (\$1.25) per square foot, excluding any rent credits for tenant improvements.~~
  - 3. ~~Minimum monthly triple net rent for retail tenants in the Lionel J. Wilson Building, City Center West Garage, or Frank H. Ogawa Plaza shall be not less than one dollar and twenty five cents (\$1.25) per square foot, excluding any rent credits for tenant improvements.~~
  - 4. ~~Minimum monthly gross rent for office tenants in the Dalziel Building shall be not less than one dollar and fifty cents (\$1.50) per square foot, excluding any rent credits for tenant improvements and a credit for possessory interest.~~
  - 5. ~~Maximum tenant allowances for the Lionel J. Wilson Building, City Center West Garage, or Frank H. Ogawa Plaza retail spaces and Dalziel Building retail and office spaces shall be twenty five dollars (\$25.00) per square foot.~~
  - 6. ~~Minimum lease term shall be three (3) years for retail and office spaces, unless the City Administrator determines that it would be in the best interests of the City to enter into month-to-month leases for certain spaces.~~

|  
COMMUNITY & ECONOMIC  
DEVELOPMENT CMTE.



Attachment B

**IMMEDIATE STRATEGIES TO CREATE MORE AFFORDABLE HOUSING:**

STRATEGY	ACTIONS	WHO IS SERVED & WHERE	LEAD	POLICYMAKING & TIMELINE
<p><b>Adopt affordable housing impact fees, including an option to incentivize building affordable units within market rate developments.</b></p>	<ul style="list-style-type: none"> <li>❖ Draft ordinance for City Council and implement the program.</li> <li>❖ Establish the internal administrative and monitoring capacity to communicate and manage the program</li> </ul>	<p>Households with 50-120% AMI who want to live in new buildings</p>	<ul style="list-style-type: none"> <li>• Planning and Building Dept.</li> <li>• CAO</li> <li>• City Council</li> </ul>	<p>(L) <b>New ordinance required</b> Spring 2016</p>
<p><b>Create a public land policy that helps fund and build more affordable housing.</b></p>	<ul style="list-style-type: none"> <li>❖ Draft a resolution for City Council to establish policies, process and criteria for evaluating how public lands should be used</li> </ul>	<p>All household income levels with emphasis on inclusionary homes for households with 15-100% AMI</p>	<ul style="list-style-type: none"> <li>• Economic &amp; Workforce Devt Dept.</li> <li>• City Council (AG)</li> <li>• CAO</li> </ul>	<p>(L) <b>New legislation required</b> June 2016</p>
	<ul style="list-style-type: none"> <li>• Fund, Inventory and develop an asset management plan for City-owned real estate</li> </ul>	<p>All household income levels with emphasis on inclusionary homes for households with 15-100% AMI</p>	<ul style="list-style-type: none"> <li>• Economic &amp; Workforce Dev Dept</li> <li>• CAO</li> </ul>	<p><b>Fall 2016</b> <b>If new resources are available</b></p>
	<ul style="list-style-type: none"> <li>❖ Continue conversations with other public agencies (such as OUSD and BART) to seek ways to partner on the development of potentially synergistic interests with proximate parcels</li> </ul>	<p>All household income levels with emphasis on inclusionary homes for households with 15-100% AMI</p>	<ul style="list-style-type: none"> <li>• CAO</li> </ul>	<p><b>December 2016</b></p>
<p><b>Pursue an Alameda County Bond measure for affordable housing construction funds</b></p>	<ul style="list-style-type: none"> <li>❖ Conduct polling and based on results, assess the size &amp; uses of this bond</li> <li>❖ Garner County's and Cities' elected officials', stakeholders' and key groups' support</li> <li>❖ Refine the bond measure to ensure maximum impact.</li> </ul>	<p>Households with 15-120% AMIs -likely lower incomes in Oakland</p>	<ul style="list-style-type: none"> <li>• EBHO</li> <li>• Nonprofit Housing Association of Northern California</li> <li>• Mayor's Office</li> <li>• Council supporters</li> <li>• Many other key supporters</li> </ul>	<p>(L) <b>Possible Council action to support the placement on the County ballot</b></p>
<p><b>Establishment of an Enhanced Infrastructure</b></p>	<ul style="list-style-type: none"> <li>• Complete the analysis and financial research to establish the feasibility and criteria for the Enhanced</li> </ul>	<p>Steps forthcoming</p>	<p>Steps forthcoming</p>	<p>(L) <b>New ordinance required</b></p>

MAY 31 2016

COMMUNITY & ECONOMIC DEVELOPMENT CMTE.

## Use some of the City's public land to create affordable housing

**Background:** The City of Oakland is itself a major property owner within the City —owning parking lots, parking structures, under-used buildings and other underutilized sites. Yet it does not have, as most cities do, a comprehensive Asset Management Plan for City-owned real estate, nor does it establish specific goals and targets for using City owned land to build or subsidize affordable housing. Next to financing, the availability and cost of land is the second most difficult barrier to the construction of more affordable housing. A comprehensive public lands strategy will be an important tool for the City —presumably creating more resources for affordable housing and other community needs as well as certainly more predictability in the City's processes.

Through an initial review of the public land owned by the City, we know that there are many small parcels scattered throughout the City as well as many parcels of all sizes zoned for commercial or industrial use. There are parcels suitable for all kinds of uses that would directly or indirectly benefit the community. Generally, we observed that there are select few parcels suitable for multifamily housing development or that would compete successfully for the typical sources available for affordable housing development —making the parcels that are appropriate quite important. This acknowledgment sharpened our recognition that in order to yield housing units, it is important to use the few sites well, require affordable housing in projects on public land zoned for housing or mixed use, and simultaneously perhaps designate at least a portion of the proceeds of any type of City owned land sale for affordable housing.)

The use of public lands in general is attracting more attention statewide as local jurisdictions and agencies try to create affordable homes in a resource-constrained environment. Making the creation of affordable housing an explicit goal for the development or sale of City-owned land would also be an important precedent for the many other agencies (Oakland Unified School District, AC Transit, CalTrans, EBMUD, etc.) that own land within Oakland. BART's recent adoption of a goal that 20% of affordable housing development on its land will be affordable is an example of how a public agency can take a strong stance to advance this important public purpose.

**Action Steps:** Amend the City of Oakland's public lands policy to establish principles for the use of public land, balance the opportunity to use this resource to provide affordable housing with other City needs and goals, identify properties suitable for affordable housing and/or mixed-income housing, establish targets, a process and criteria for evaluating such opportunities, and provide for a reasonable percentage of the

(proceeds from the ongoing sale of public land to support the City's Affordable Housing Trust Fund (AHTF). In addition,) identify strategies for capturing value derived from City action such as rezoning and potentially use that value to generate affordable housing production. We estimate that these actions will result in hundreds of homes affordable to low and moderate income households and at least \$10 million for the City's AHTF.

Given that the city-owned lands available for housing development or for quick sale are limited, members of the work group have also encouraged examining other tools that the City could use. For example:

1. Certain city actions can add tremendous value to landowners without the City establishing policies that might capture any of that increased value for the community. This can occur through the crafting of Specific Plans, rezoning multiple large parcels for specific developments, or relaxing development standards and requirements. The Working Group is considering how a land value recapture strategy could link "up zonings", additional permitted uses, or increased densities to a requirement for affordable housing production as a community benefit.
2. Another concern related to the City purchases and sales of property is a perceived inconsistency among the appraisals for various properties. Greater transparency on the appraisal methods, assumptions, and comparable sales that were used would help alleviate confusion about the true value of parcels the City is buying or selling.

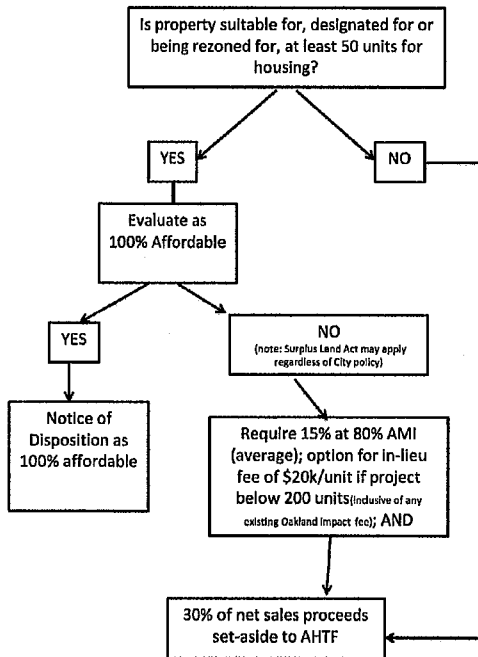
**Action Steps:** (Further details will be available in the Cabinet's Full Report.)

### 6.C) Create a Public Land Policy

- a) **Develop an Asset Management Plan for City-Owned Real Estate (Potential Surplus/Development Properties/Properties for Lease) through a Request for Proposals process. Cost: approximately \$90,000. (Once funds and a consultant are identified by Council, it can be completed in six months.)**
  - 1) (Identify City properties with surplus potential and target properties with potential capacity to build 50 units or more. Develop a strategy that assesses the maximum development potential and the value of a site, as well as the value with varying levels of affordable housing production.)
  - 2) Ascertain potential to partner with agencies owning properties nearby.
  - 3) (Issue RFPs for potential affordable housing sites within a year after completion of the AMP.)
- b) **Dispose of City Properties and Include an Affordable Housing Benefit**
  - (1) (Analyze land owned by the City for suitability as affordable housing (i.e., appropriate for

- (multi-family residential use, close to transit and amenities, and large enough to compete for State and Federal funding sources). For suitable sites, those sites will be evaluated as 100% affordable housing sites, or as mixed-income sites with a minimum threshold of 15% of the units affordable. Evaluate the potential subsidy required under each scenario to produce affordable housing units. For sites to be disposed of for market-rate housing that are not suitable for 100% affordable housing, those sites will have an inclusionary target of 15% BMR units at an average of 80% of AMI, or pay a fee of \$20,000 per market rate unit, whichever provides greater benefit to the City.)
- (2) (For any site that is disposed of that generates net sales proceeds to the City, 30% of the net sales proceeds shall be deposited in the AHTF.)
- 3) Analyze the potential for smaller sites zoned for housing to be developed and financed by alternative public or private resources.

**City of Oakland Owned Real Estate Disposition**



- c) **Public action should include an Affordable Housing Benefit.** While the particulars of this tactic are under discussion, the notion is that for city action on publicly owned land (such as rezoning or significant infrastructure investment), an appraisal would be required at the time of the action, determining the property value both *before* and *after* the action. For

example, the sales price would be based on the fair market value *after* the public action. At the time of sale, a portion or all of incremental value would be transferred to the AHTF in addition to the standard (as described above) 30% of the value.

- d) **Ensure consistency in valuation of property sold or purchased by City.** All appraisals of property purchased or sold by the City shall include a special section with a rationale of the subject property's value compared to other recent City land sales or purchases, in addition to the standard sales comparable section. Staff reports to City Council must include that rationale from the appraiser.

**7) Build & Expand Pipeline of Market Rate Homes**

**Background:** Between 2010 and 2014 the Bay Area added roughly 446,000 private-sector jobs and only 54,000 housing units, which has greatly impacted housing prices throughout the region, and particularly in Oakland, where rents increased by over 68 percent between 2007 and 2015.

There are actions the City can take to help encourage both affordable and market rate housing production. The City can create rules that help encourage the construction of units that are designed to be more efficient and less costly to build so they can be brought to market at more affordable prices. The City can also make sure its own permitting processes use resources efficiently while working to focus public input on larger, complex projects, letting smaller, more typical projects move forward more quickly. The City can also foster a climate that engenders investor confidence, which will support the construction of housing at all income levels both in Oakland and throughout the region. This will enable the City's affordable and market rate developers to build at least 12,250 market rate homes and approximately 4000 affordable homes over the next eight years in order to meet our production goal of 17,000 units.

**Action Steps:**

**7.A) Support the creation of units that are efficient to construct. Finding ways to encourage more efficient units can help to add to Oakland's housing supply, particularly for middle-income households.**

- a) The City is working on new zoning regulations to encourage the construction of secondary units. The City can encourage property owners to create secondary units by engaging in marketing and education efforts for property owners, creating pre-approved building plans, and waiving permit fees.
- b) Encourage modular or pre-fab construction to reduce cost and construction time by up to 20 percent.