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OAKLAND

SUPPLEMENTAL AGENDA REPORT.

2013 NOV 22 AM 10:18

TO: Honorable City Council

FROM: Deanna Santana
CITY ADMINISTRATOR

SUBJECT: Policy to Lease Rather
Sell, City Property

DATE: November 21, 2013

City Administrator
Approval

Deanna Santana

Date

11-22-13

COUNCIL DISTRICT: CITY-WIDE

BACKGROUND

The Administration would like to thank City Attorney Barbara Parker and Councilmember Gibson McElhaney for being afforded an opportunity to review and comment on the proposed policy.

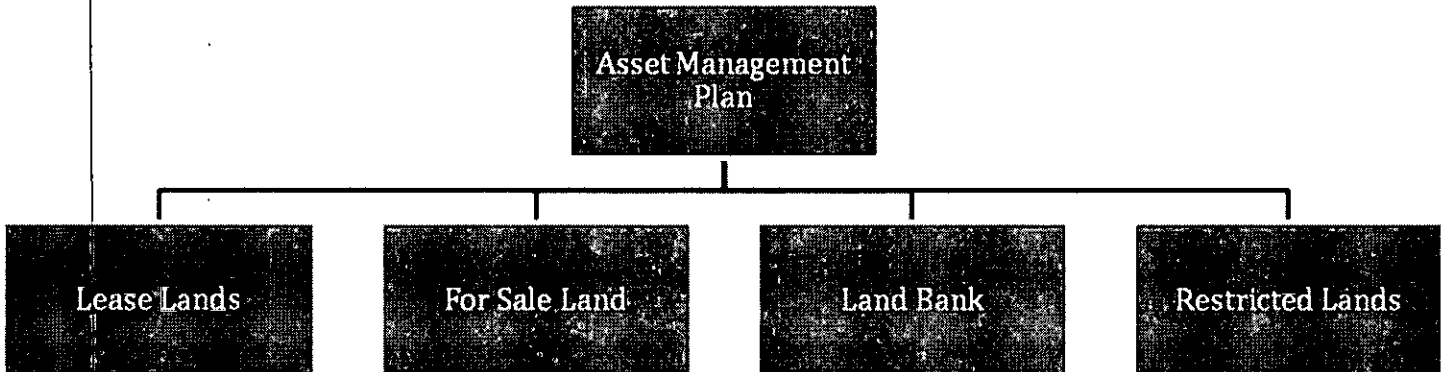
This purpose of this memorandum is to provide several key points for consideration when formulating the Council policy on "Lease vs. Sell" of City properties. As part of FY 13-15 Adopted Policy Budget, the City Council approved staff's recommendation for the development of an Asset Management Plan to create a comprehensive strategy on City owned properties. The strategy was prompted to begin to move effectively and strategically manage the City's assets that yield the highest and best use. As part of this effort, the City should consider the short- and long-term wellbeing of the city's facility conditions, mortgage, financial structure, liabilities, deed restrictions, economic development opportunities, maintenance and operational costs.

Council approved the recommendation to develop an Asset Management Plan and strategies for the best highest use of the properties and which would include opportunities for economic development and revenue enhancements. The plan can include plans to lease or sell properties and provide flexibility to the City. It is important to note that an Asset Management Plan would be necessary regardless of whether we implement a "lease" policy. The "lease" policy proposal would be a sub-section of the larger Asset Management Plan, since not all City owned parcels are best suited for lease discussion.

This lease vs. sale policy would also change the direction of recent City legislation. For example, Ordinance 13185 passed in June of 2013, which was to promote sale of city owned property for development. The legislation authorized staff to include considerations in the disposition process beyond property value and sale of rental price, such as the nature of the proposed development and use of the property and resulting benefits to the city and community.

Item 7
CED
December 3, 2013

Below is a diagram of the relationship each potential land disposition category would have with an Asset management Plan:



For the purposes of an asset management plan the terms in the diagram above would mean the following:

Lease:

A written agreement between the property owner and a tenant that stipulates the payment and conditions under which the tenant may possess the real estate for a specified period of time.

Restricted properties are properties which have restrictive covenants in deed:

Any type of agreement that requires the buyer to either take or abstain from a specific action. In real estate transactions, restrictive covenants are binding legal obligations written into the deed of a property by the seller. These covenants can be either simple or complex and can levy penalties against buyers who fail to obey them.

Sale:

A sale is the act of selling a real estate asset in return for money or other compensation

Land Bank or Hold for future development:

Refers to aggregating parcels or properties for future sale or development.

A few specific items to consider include, but are not limited to:

1. The Adopted FY 13-15 Policy Budget: A \$4 million property sale was used as a one-time revenue budget balancing measure for FY 2014-15 (see Table 5 in page 7 of the FY 2013-15 Budget Highlight). Any policy adopted by the Council would need to take into consideration this current direction to staff and/or revenue projections.

2. There are pros and cons to lease or sell the City properties. A summary is listed in table below:

Pros for Lease	Con for Lease	Pros for Sell	Cons for Sell
<ul style="list-style-type: none"> • The assets stay with the City and the property values are likely to grow over time • If lease is secured, revenue is on-going • Deed restrictions, some City owned parcels include covenants or restrictions which impact our ability to sell or encumber the property. • Non-profit financing 	<ul style="list-style-type: none"> • The City needs to maintain and market the properties even when a lease is not secured • The City incurs liability for lack of maintenance properties • Not all properties are ideal for lease. An asset management plan would help determine which are or are not ideal for lease. 	<ul style="list-style-type: none"> • City can manage the properties within the limited resources • The private sector can develop the properties in context of the City's economic development • The City can realize short-term revenue and eliminate on-going operating costs and liabilities • City can leverage owned land as a part of economic development deal(s) • City can sell or buy with flexibility – packaging properties as a development package or in exchange for a property in a more desirable area of the city. 	<ul style="list-style-type: none"> • City will lose the ownership of the properties that can be utilized, developed or used as collateral • City will lose the potential opportunity to develop the properties to meet the future needs

See Attachment Ordinance

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2013 JUN 27 PM 3:33

APPROVED AS TO FORM AND LEGALITY:
BY: Kiran Jain
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. 13185 C.M.S.

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ADD A NEW CHAPTER 2.41 ENTITLED "DISPOSITION OF CITY-OWNED PROPERTY FOR DEVELOPMENT"

WHEREAS, Section 1001 of the Charter of the City of Oakland authorizes the City Council to establish by ordinance uniform procedures for the sale, lease or other disposition of City property; and

WHEREAS, Ordinance No. 11602 C.M.S. governs the sale of City-owned surplus real property, Ordinance No. 10142 C.M.S. governs the sale or lease of City-owned real property that is not surplus, Ordinance No. 11603 C.M.S. governs the lease of City-owned property, and Ordinance No. 11722 C.M.S. governs the lease of City-owned real property in which the tenant provides in-kind services; and

WHEREAS, there is need for additional legislation that governs the City's disposition of property through sale or lease for development in order to serve economic development, housing, environmental, and community development goals in a manner outside the procedures set forth in previous City disposition ordinances; and

WHEREAS, the City has real properties that are no longer usable by the City as initially developed or acquired, but that are suitable for disposition for development purposes, as well as properties that were acquired by the City specifically for development purposes; and

WHEREAS, this Ordinance would authorize staff to include considerations in the disposition process beyond property value and sale or rental price, such as the nature of the proposed development and use of the property and resulting benefits to the City and community; and

WHEREAS, the City is a home-rule charter city with plenary powers under the California Constitution to make laws with respect to municipal affairs subject only to the restrictions and limitations in the Charter; and

WHEREAS such home-rule powers includes the power to promote economic development and advance the prosperity, general welfare and well-being of Oakland residents; and

WHEREAS, per California Government Code Sections 37350-37351, cities may control and dispose of property for the common benefit, as is necessary or proper for municipal purposes; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of CEQA have been satisfied, and in accordance with Sections 15061(b)(3)(general rule exemption), 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), Section 15183 (projects consistent with the General Plan), Section 15312 (Surplus Government Property Sales) and 15332 (In-fill Development) of the CEQA Guidelines, the adoption of this Ordinance is exempt from the provisions of CEQA; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. A new Chapter 2.41 is hereby added to the Municipal Code of the City of Oakland as follows:

Chapter 2.41

**DISPOSITION OF
CITY-OWNED PROPERTY FOR DEVELOPMENT**

ARTICLE 1. SCOPE

2.41.010 Title

This chapter shall be known as the "Disposition of City-Owned Property for Development", may be cited as such, and will be referred to herein as "this chapter".

2.41.020 Intent and Application

This chapter 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 goals of the City under the procedures set forth in this chapter. 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 chapter. Sales, leases or disposition of City-owned real

property for purposes other than development may be governed by other disposition ordinances, including Ordinance No. 11602 C.M.S. (sale of City-owned surplus real property), Ordinance No. 10142 C.M.S. (sale or lease of City-owned real property that is not surplus), Ordinance No. 11603 C.M.S. (leases of City-owned property), and Ordinance No. 11722 C.M.S. (leases of City-owned real property in which the tenant provides in-kind services).

2.41.030 Authority.

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

2.41.040 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.

ARTICLE II. ADMINISTRATIVE

2.41.050 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 will not necessarily apply to other portions of this title:

City means the City of Oakland, a municipal corporation.

City Administrator means the City Administrator of the City of Oakland or his or her designee, and successors in title.

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.

NODO means a Notice of Development Opportunity.

Property means City-owned property subject to **Disposition** and **Development**, as determined by the City Administrator.

Substantial rehabilitation means rehabilitation, the value of which constitutes 25% or more of the after-rehabilitation value of the building or facility inclusive of land value.

2.41.060 Process.

- (a) The City Administrator shall market the 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) 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.
- (c) in evaluating Development proposals for Property under this chapter, the City Administrator may consider, without limitation, in addition to price, the following factors:
 - 1. The value of the proposed use of the 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 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.

(d) 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 the proposed Development to the City Council. The City Council may evaluate the City's Administrator's recommended Development proposal and any other proposals based on the considerations set forth above.

(e) Per the City Charter, any such approval of a lease (longer than one year) or a sale of the Property requires a Council ordinance.

2.41.070 Fair Market/Rental or Fair Reuse Value.

The Property may be disposed of either at its fair market/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 determination of fair market/rental value will consider the Property's sale or rental value on the open market at the Property's highest and best use.

The determination of fair reuse value will consider 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.

The City Administrator shall complete an analysis of the Property's fair market/rental value, or fair reuse value, as applicable, in determining an appropriate Disposition price.

The ordinance authorizing the Disposition of the Property shall include either a finding that the Property is being conveyed at its fair market/rental value; or, if the Property is being conveyed for less than fair market/rental value, a finding that the Property is being conveyed at its fair reuse value with the reasons for the below-market conveyance.

If the Property is being conveyed at less than fair market/rental value, all City employment and contracting programs pertaining to subsidized projects shall apply.

2.41.080 Agreements to Effectuate Intent of Negotiated Development.

(a) Any Disposition of Property pursuant to this chapter 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) 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.

Section 3. Applicability

A. Construction and Severability

Should any article, section, subsection, sentence, clause, or phrase of this Ordinance be held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

B. Authority

This ordinance is enacted by the Council of the City of Oakland through section 1001 of the Charter of the City of Oakland.

C. Effective Date

This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 30 2013

PASSED BY THE FOLLOWING VOTE:

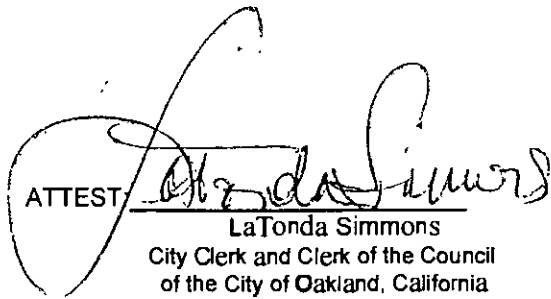
AYES - KALB, ~~REID~~, GIBSON-MCELHANEY, SCHAAF, GALLO, ~~BRADY~~, KAPLAN, AND PRESIDENT KERNIGHAN - 6

NOES - 0

ABSENT - Reid - 1

ABSTENTION - 0

Excused - Brooks - 1

ATTEST 
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

introduction Date JUL 16 2013

Date of Attestation August 2, 2013