CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV 25 PM 4:11

# AGENDA REPORT

**TO:** CHAIRPERSON REID AND MEMBERS OF THE COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

**FROM:** INTERIM CITY ADMININSTRATOR GARDNER
BARBARA J. PARKER, CITY ATTORNEY
LYNETTE GIBSON-MCELHANEY, CITY COUNCILMEMBER

**SUBJECT:** **Resolution Establishing a General Policy to Lease, Rather Than Sell, City Property**

City Administrator Approval | Date 11-25-14

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

The City Administrator, City Attorney and Councilmember McElhaney recommend that Council adopt:

A Resolution Establishing A General Policy To Lease, Rather Than Sell, City Property

## EXECUTIVE SUMMARY

The (now dissolved) Redevelopment Agency and the City historically have generally conveyed commercial property to potential developers by sale rather than by long term ground lease.[1] Pursuant to the City Attorney's recommendations in recent years, the City has ground leased, rather than sold, two (2) major development parcels to private developers. [2] The City Attorney's Office worked with City staff to negotiate another long term ground lease to an Army Base commercial truck operator.[3]

[1] Examples include the City's sales to developers of the Rotunda Building and the Rotunda Garage, Oakland City Center, and Domain Apartments Project at 14th and Jefferson, and Preservation Park.
[2] In 2005, the Agency ground leased the Uptown Project property to the developer for 66 years. In 2012, the City executed a Lease Disposition and Development Agreement (LDDA) for the Oakland Army Base Project whereby the City will ground lease the property for 66 years to the Army Base Master Developer.
[3] The City has executed an LDDA and terms include a related ground lease with OMSS, Inc., to operate a truck serving facility at the Army Base.

City staff currently is negotiating or has negotiated several major transactions requiring the City to sell its property to private parties for development.[4] The City Attorney, Councilmember McElhaney and certain other policy makers have expressed concern that the City is unnecessarily losing valuable City assets forever by selling rather than leasing its property. Those assets can be a source of revenue for the City in the future and provide an important role for the City in the planning and use of the City's vital resources.

This report presents a summary of the pros and cons of establishing the City's general policy to ground lease, rather than sell, City property for development or purchase except for remnant parcels. Remnant parcels are of a size, shape, or location that renders such a parcel essentially without utility or value because it cannot either by itself or in combination with other contiguous parcels be used by the City for lease or development or any other purpose that would generate revenue for the City or otherwise benefit the City. The proposed legislation would provide for Council to authorize sale of City property, instead of a lease, on a case-by-case basis upon considering the City Administrator's recommendation to Council including his/her reasons why sale is necessary or in the City's best interests. This proposal would shift from the historical policy and practice of selling City properties and instead establish a general policy of leasing City properties.

## OUTCOME

Passing this Resolution will establish a general policy of retaining valuable City assets to maximize community benefits, long-term revenue streams and the City's control of the property in the future and provide greater ability to enforce City laws and policies. The proposed legislation provides that the Council could authorize a sale, instead of a lease, on a case-by-case basis if City Administrator recommends sale as necessary or in the City's best interests and, after considering the City Administrator's recommendation, the Council finds that sale is in the City's best interests.

## BACKGROUND/LEGISLATIVE HISTORY

In light of the dissolution of redevelopment agencies, the City recognized a need to adopt a property disposition policy incorporating, among other factors, principles that promote economic development and community benefits. According, in July 2013, the City adopted OMC Chapter 2.41: "Disposition of City-Owned Property for Development". This ordinance allows the City to dispose of its own property through a "notice of development opportunity" after the City has met all applicable requirements under the State's surplus laws.

Today, the City owns more than 1,400 properties. The table below lists categories of properties by the City custodianship (see Table 1 which lists City-owned property as of 2010). These properties fall into a wide variety of categories, including:

[4] Proposed sales include two (2) recycling projects at the Oakland Army Base, and projects at 1800 San Pablo; Valdez and Webster Streets; and the sale of the Champion Street fire station in the Dimond district, recently approved by the City Council.

- Land that has been deliberately acquired for a specific facility or purpose (e.g., site for a fire station, park, corporation yard, etc.);
- Properties acquired for future development;
- "Remnant" parcels, which are irregular parcels left over from road construction or other capital projects;
- Bequests and donations of property;
- Property that was previously developed for a city facility;
- Parcels that are jointly administered with other government agencies.

The vast majority of the City's properties are dedicated for a civic purpose. Accordingly, only a small fraction of these properties will be eligible for sale or lease. On the other hand, the City under its Long Range Property Management Plan probably will transfer most of its properties for redevelopment to private developers.

**Table 1: Ownership of City/City Properties, as of 2010**

| Responsible City/ Department | Number of Parcels | Typical Uses of Parcels |
|---|---|---|
| Parks & Recreation | 511 | Parks, open space, museums, libraries, etc. |
| Public Works Agency | 342 | Maintenance facilities, street remnants, etc. |
| Economic & Workforce Development Department | 76 | Redevelopment |
| Economic & Workforce Development Department | 47 | Various |
| Fire Department | 24 | Fire Stations |
| Police Department | 1 | Police Station |
| Other | 12 | Oakland/Alameda County Coliseum; Oakland Joint Powers Financing Authority; Oakland City Center LLC; etc. |
| | | |
| Total | 1,013 | |

It is unclear at this time how many properties the City will convey in the near future, but it typically sells or leases a number of properties each year.

The City conveys property for a variety of reasons including redevelopment, promoting economic development, generating revenue, and reducing potential liabilities of owning property.

Based on an informal survey of Bay Area city staff and counsel, and on our own experience, this report provides the basic pros and cons of using ground leases versus selling City property, and the circumstances under which agencies typically use each form of conveyance.

Some agencies, including those of San Francisco, the Port of Oakland, and Bay Area Rapid Transit ("BART") have policies and/or practices that discourage selling property in favor of ground leasing when possible, to retain real estate as a long term public asset. In those jurisdictions, with a few exceptions, agencies almost always ground lease rather than sell redevelopment property. Other jurisdictions, like San Diego and San Luis Obispo, for example, list factors for considering a lease versus selling property.[5] Still other agencies typically sell city property outright rather than ground leasing the property.

## A. Ground Leasing

Cities commonly use ground leases: (1) if the city or the public may need or desire to have the flexibility to use the property in the future or for other purposes; (2) if the ground lease will provide some longer term economic benefit, including a rental revenue stream and/or appreciation; (3) if the city wants to easily exert more control over a development; or (4) as a matter of policy to ensure that public property remains public property even though it is privately developed.

### 1. Potential Ground Lease Advantages

#### a. City's Future Use

By ground leasing a property, the city remains the owner of the property, and the private developer is the ground lease tenant. Unless the city gives the tenant an option to purchase and the tenant ultimately buys the property, the land will revert back to the city at some point. The City could develop the property for some other use when it reverts back to the City or the City could increase the rent based on property appreciation or rent the property to another party.

#### b. Flexibility in Creating a Revenue Stream

Ground leases allow the City to structure payments to meet its financial needs. Ground leases can include a one-time upfront payment of rent, or provide for an annual or other periodic income stream. Though the City can participate in the profits of the project in both a ground lease and a sale, profit participations are easier to monitor and enforce under a ground lease because the city has a direct relationship with the tenant. A tenant's ground lease rental payments could give a

[5] For San Diego's Policy, refer to Council Policy No. 700-10 located at http://docs.sandiego.gov/councilpolicies/cpd_700-10.pdf. For San Luis Obispo, refer to Section 475-C, located at http://www.slocity.org/finance/download/policies/Real%20Property%20Acquisition%20&%20Disposal%20Policy.pdf.

city a consistent, predictable revenue stream, based on the city's unique needs. The city retains the flexibility of structuring the revenue stream in a myriad of ways. If, for instance, the city wants the entire property value up front (similar to getting the full purchase price in an outright sale), it could require the tenant to pay a large up front rental payment, with nominal payments in future years. Conversely, the city could require the tenant to make periodic rent payments based on the amount and timing determined by the city's needs.

Moreover, the city might reap the benefit of future property appreciation by using rent escalation lease provisions. For example, it may be very difficult to determine a retail property's value because there may be few comparable parcels of a similar size, use and location. These transactions could allow for a revaluation of the property after several years, and the city could increase the rent if the initial valuation was too low.

**c. Exerting More Control over Project Development**

A city generally retains more control over a development by ground leasing rather than selling a property to a developer. The city retains its ownership interest under a ground lease. If a city sells property outright, it relinquishes its ownership interest and can only enforce its rights against a defaulting developer by, for instance, suing to invoke a "right to repurchase" under the disposition and development agreement (DDA) between the parties.

Generally speaking, if a developer defaults or does not operate the property as the city expects, it is much easier for the city to terminate a lease than for the city to file a lawsuit to take back the property the city has sold to the developer pursuant to a repurchase right. So, for instance, the City has much more leverage as a landlord to enforce any negotiated community benefits or other project-specific requirements.

A city can often use a ground lease to balance the control it needs, while giving the developer adequate flexibility to administer its development. For example, if the project is risky, the city can ground lease the property, giving the developer an option to purchase after several years of operation, once the developer shows that the project has been successful.

**d. Retaining Public Property as a Matter of Policy**

Ground leasing allows a city to convey property for private development, yet keep the property for future public use and potential property appreciation, thereby ensuring that public property remains public property.

**2. Potential Ground Lease Disadvantages**

**a. Retaining Potential Liability**

If a city ground leases a property, as the property owner, it retains potential liability for activities on the property or environmental defects, even if it requires the tenant to indemnify the city in the lease. Claimants see a city on the title and may look for the "deep pocket" to sue. However, this risk can be addressed in many cases by: (1) making sure that the tenant (or a guarantor) is financially strong and capable of backing up its obligation to indemnify the city; and (2) ensuring that the tenant obtains adequate insurance to protect the City's interests. Also, environmental laws impose potential liability on a city for certain environmental matters whether or not it has sold the property outright or ground leased it to a developer. So a third party likely would sue the City even if the City sold the property outright.

**b. Developer Financing**

Some developers argue that projects are more difficult to finance with a ground lease, loans are more expensive, and loan documents are more complex. Additionally, some developers have never ground leased property before and are not familiar with the concept. Based both on the experience of attorneys in the City Attorney's Office and on the views of the attorneys we have surveyed, we believe most lenders are comfortable with making ground-leased based loans. Loan documents indeed can be more complicated and include more mortgagee protection provisions. However, most major lenders have frequently financed ground lease transactions and ground lease financing is commercially and customarily available in the financial market.

**c. Increased Infrastructure Costs**

In some cases, a city may be compelled to pay for more of the infrastructure and upgrade costs if it ground leases property. Since the city may ultimately end up with the property, the developer will argue that the city should cover the long-term costs attributable to the property. However, this issue can be addressed in a number of ways, such as adjusting the lease fees and term to allow the developer to amortize development costs. In the past, the City of Pinole, for instance, has had a strict ground leasing preference that resulted in the city covering more upgrade and infrastructure costs than it would have otherwise.

**d. Generating Less Revenue In Terms of "Present Value"**

Depending on the type of development that is likely to take place on the site, leasing may generate 25% to 30% less revenue (in terms of the "present value") than a sale of the property. This is because, under a long-term ground lease, the tenant does not enjoy the appreciation of land value and, and at the end of the lease term, may face greater uncertainty as to the long-term accommodation of its business. However, this is not a universal rule, and each transaction should be analyzed for its economic impact, along with a consideration of the other non-economic factors favoring leases. However, over the long term, given Oakland's central location and desirability, the City likely will be able to realize the benefits of appreciation in value over time and recoup these losses and again over the long term realize greater revenue streams.

**e. Unique Circumstances Making a Sale Preferable**

Finally, sales may be preferable for a particular transaction such as for affordable ownership (as opposed to rental) housing projects based on the unique needs and considerations of those types of projects. However, the proposed general policy will not preclude such sales if staff presents a convincing rationale to the Council for a sale in a particular case.

**B. Transfer by Sale**

**Pros:**

A sale may be preferable if the City's need for money outweighs the need to keep a long term asset, and the City has determined that it will have no use for the property in the future. However, as noted above, even in that case, the city could structure a ground lease so that the developer makes a large up front rental payment in an amount comparable to the purchase price in an outright sale.

A developer may complete a project more quickly if the city sells it the property. Unless the purchase is made at a deep discount, a developer who purchases the property usually has a financial incentive to complete the project quickly and start recouping the cost of purchase. Again, however, if the developer has to make a large upfront ground lease payment, it has the same incentive to complete the project just as quickly.

A city may also choose to transfer the property by sale when the city only owns a portion of the project area or small, irregular parcels. For example, in the San Francisco's Bloomingdales project, the developer already owned most of the land but needed the City to vacate some rights of way. The City sold the property to the developer because the City only owned small pieces of land in the project area, and leasing the parcels would have been impractical.

**Cons:**

Conversely, transferring property by sale has many disadvantages. Conveying fee title to a developer allows the developer to maximize its profit from publicly-owned property. Additionally, it is more complicated to structure a sale transaction to accommodate a city's desire for a long-term income stream. And while a city can participate in the profits of the project in both a ground lease and a sale transaction, profit participation is easier to enforce under a ground lease because of the direct relationship between the city/landlord and the developer/tenant.

## ANALYSIS

### A. Ground Leasing City Property

**Pros:**

1. **City retains ownership of a valuable City asset.**

   Ground leases allow a city to retain the property as a long-term public asset. When the City leases property for development, the asset reverts back to the City at the end of the lease. Public property, even though privately developed, remains a public asset; the City can make it available for another public use or private development when the ground lease expires.

2. **City realizes benefit of property appreciation.**

   Because the City retains title to its public asset, any property appreciation accrues to the City rather than a private party, when the City gets its property back at the end of the lease term.

3. **As Landlord, City increases its ability to oversee and enforce City policy objectives.**

   City development deals require the private developer to comply with specified City policies and requirements, and to meet specified development deadlines. Examples include: developer obligations to employ local residents; maintain the project in a first-class condition; not discriminate against protected classes of people; use the property only for specified uses and prohibit certain undesirable uses; and complete the project by a date certain.

   When the City sells land to a private developer, it is difficult to quickly and effectively enforce post-sale developer obligations. Legal rules generally make it more difficult to enforce a seller's attempt to force a buyer to reconvey property back to the seller because the buyer violated a post-closing obligation.[6]

On the contrary, a landlord retains significant power to enforce a tenant's obligations by declaring a lease default which, if uncured, entitles the landlord to terminate the lease. The landlord's notice of lease default quickly gets the tenant's attention because the tenant effectively could lose its entire leasehold interest if it fails to cure a lease default[7].

As noted above, courts generally do not like forcing a buyer to "undo" a completed sale if the seller complains about a post-sale breach. However, courts generally do not hesitate to grant a landlord's request to terminate a lease if the tenant clearly commits an uncured lease default.

4. **Controlling the Use of the Property.**

Ground leasing gives a city more control over the developer's operation or use of the property than through an outright sale. Generally speaking, it is easier to terminate a lease than it is to get property back once the city has sold it. Also, the developer is more likely to cure a "default" or maintain the project because it knows the city more easily can terminate a lease than file a lawsuit to enforce a "repurchase right."

5. **More Flexibility.**

Ground leases can help the City retain control, while giving the developer adequate flexibility to operate its project. For example, if the project is risky, the City can use a ground lease with an option to purchase the property after several years of operation, once the developer demonstrates that the project has been successful.

6. **The City Preserves Increased Flexibility and Potential Profitability From a Revenue Stream.**

In a sale of City property, the City typically gets the purchase price the buyer pays and does not otherwise participate in the buyer's future profit or land appreciation.[8] In a lease, however, the City has flexibility to devise a desired revenue stream, including the possibility of sharing in significant developer profit.

---

[6] This doctrine is commonly known as the "Rule against Restraints."
[7] If the tenant fails to cure a lease default and refuses to vacate the premises, the landlord would need to sue the tenant to take back possession of the property. However, the City's likelihood of terminating the lease and getting the property back in an unlawful detainer lawsuit is much higher than the chances of the City's enforcing a "right of repurchase" for a buyer's post-closing breach (e.g., the buyer's failure to comply with certain community benefits).
[8] The Agency/City has consummated a number of deals whereby the buyer must pay the Agency/City a percentage of future property sale proceeds. This approach, while beneficial, has limitations.

For example, the City could set rent at a flat rate, with periodic upward rent adjustment (based on CPI, a set percentage increase, a set dollar amount increase, or any other number of formulas). The City could also require the tenant to pay percentage rent (e.g., a percentage of a retail tenant's sales; a percentage of the tenant's subtenant rents; a participation in any tenant refinancing of the property, etc.).

Additionally, if the City decided it needed an immediate upfront payment similar to what the City would receive if it sold the property to a buyer and received the full purchase price, the City could simply require the tenant to pay a large upfront "rent" pre- payment.

7. **Retaining Public Property.**

   Ground leasing allows the city as a policy matter to keep public property truly public.

8. **Meeting the City's Financial Goals.**

   Ground leases allow the city to structure payments to meet its financial needs. Ground leases can include a one-time large payment of rent, or it can provide for an annual or other periodic income stream. Moreover, profit participations are easier to monitor and enforce under a ground lease.

9. **Projects Subject to the Tidelands Trust.**

   Many development projects at the Port, or on the water, are subject to the public trust. A trust overlay often prohibits the sale of property, and in such a case ground leasing is the only option.

10. **Project Labor Agreements.**

    Ground leases increase the City's ability to, if it chooses, require a project labor agreement for a particular project because the City retains an ongoing proprietary interest in the leased property.[9]

[9] Developers sometimes argue that Federal labor law preempts a city from imposing a project labor agreement (PLA) or other labor-related requirements on a project. However, authority exists to justify imposing a PLA requirement where the City can demonstrate that it retains a substantial proprietary interest in enforcing such a requirement. The City may be able to demonstrate the necessary interest if it sells a property to a developer. However, the City's case is strengthened where, rather than sell, the City retains ownership in the property and leases it.

**Cons:**

1. **Ongoing Liability.**

   By retaining title to the property under a lease, the City retains ongoing liability for matters such as personal injuries and hazardous materials violations. The City can minimize the risks that it could be liable for ongoing personal injury, hazardous materials, or other liabilities by requiring the developer/tenant to: (1) indemnify the City for these risks; and (2) demonstrate that the developer or its guarantor maintains adequate financial resources and insurance to cover such risks.

   Regarding potential hazardous materials liability, applicable law imposes liability for existing environmental liability on the City even if the City sells its property outright to a buyer. With certain limited exceptions, as long as the City was in the title chain, under most environmental laws, the City is jointly liable with other former and current property owners. Accordingly, for existing hazardous materials, it makes little difference if the City is selling or leasing the land.

2. **Financing Problems.**

   Some developers argue that projects are more difficult to finance with a ground lease, loans are more expensive, and loan documents are more complex; however, most major lenders are knowledgeable about and finance ground lease transactions.

3. **Cost of Upgrades and Infrastructure.**

   Some agencies, but not all, pay more infrastructure and upgrade costs because the city will ultimately end up with the property.

4. **Slower Development.**

   Developers have incentives to complete projects quickly, if they purchase the property or make a large one-time payment at the commencement of the project because of land carrying costs and other factors. As noted above, however, a landlord could require a comparable upfront lease pre-payment which also incentivizes the developer/tenant to quickly build out the development.

5. **Ground Lease May Not Provide City With Desired Significant Upfront Payment.**

   In a sale, the City usually gets a large upfront payment when the buyer pays the cash purchase price in one lump sum. However, as noted above, if the City leases the property, the City can obtain the same desired payment by requiring a large upfront rent pre-payment.

6. **Potential for Reduced Rent and/or Higher Infrastructure Costs.**

A developer may demand a reduced rent or require the City to pay more for public infrastructure on the theory that the City ultimately gets the property back at the end of the lease.

However, granting the developer a long-term ground lease allows the developer ample time to amortize its improvements. This structure effectively allows the developer to recoup all its investment, and discredits the notion that the City should pay extra costs for the developer's benefit because the City will get the property back.

Even if the City paid more under this theory, the City achieves positive tradeoffs because it ultimately gets the property back, with its attendant appreciation and value as a public asset.

7. **Less Marketable.**

Many developers, especially less experienced developers, insist on an outright sale. They assert they would never accept a ground lease.

However, the financing markets/lenders have long-ago accepted that long-term ground leases are equivalent to outright sales. Accordingly, sophisticated developers generally have no problem with accepting ground leases because they know they can obtain leasehold financing. Educating the less-sophisticated developer mitigates this potential ground lease disadvantage.

Additionally, as other cities with a general ground lease policy (such as San Francisco) have found, if a city institutes a ground lease policy, developers quickly adjust because they want to do business with the city.

8. **Reduced Transfer and Property Taxes.**

For property and transfer tax purposes, a long-term ground lease (usually defined as a lease of 35 or more years), generally is considered the same as an outright sale. Accordingly, the City would not lose property or transfer tax revenue by leasing property.

## B. Sale of City Property

**Pros:**

1. **Meeting the City's Financial Goals.**

   A sale is preferable where the city's need for money outweighs the need to keep a long term asset, and if the city has determined that it will have no use for the property in the future.

2. **Faster Development.**

   Unless the purchase is made at a deep discount, a developer who purchases the property usually has a greater financial incentive to complete the project quickly and start recouping the cost of purchase.

3. **City Only Owns a Portion of Project Area.**

   The city may choose to sell the property to the developer where the city only owns a small portion of the project area or irregular parcels.

**Cons:**

1. **Possible Windfall to Private Developer.**

   Transferring fee title to a developer allows the developer to maximize their profit from publicly-owned property.

2. **Less Flexibility in Meeting the City's Financial Goals.**

   It is more complicated to structure a sale transaction to accommodate a city's need for a flexible income stream. And while the city can participate in the profits of the project in both a ground lease and a sale, profit participations are easier under a ground lease because the city has a direct relationship with the lessee.

3. **Less Enforcement Rights.**

   In an outright sale, the city does not have the same level of control or leverage to enforce the developer's obligations (e.g., to enforce negotiated community benefits or monitor the project's operation.

## C. Flexibility in General Policy

Adopting a resolution establishing a general policy to lease versus sell City property other than remnant parcels will not preclude the City from deciding to sell property on a case-by-case basis. In instances where City staff determines it preferable to sell, staff would include in its report to Council the reasons why sale is necessary or in the City's best interests. For example, guided by a general policy preferring leases, Real Estate could analyze each parcel for its "Highest & Best Use" and determine whether it would recommend an exception to the policy based on the current financial position of the City, and the factors favoring sales over leases as described above. Real Estate would then determine if it is an option to sell the parcel and, if so, what legal or practical constraints would restrict the sale. The Council, after considering the City Administrator's recommendation would make a finding by resolution that sale is in the City's best interests.[10]

## PUBLIC OUTREACH/INTEREST

Multiple benefits could accrue to the City and its residents if the City adopts a general policy of conveying City-owned property for development by ground leasing instead of selling its property assets. The policy provides a procedure on a case-by-case basis to make exceptions to the the general policy. Adopting a the proposed resolution will help ensure that the City maintains valuable City assets for future public use and enjoyment and as a long term revenue source; and allows City in the long term to control future uses of the property.

## COORDINATION

The City Attorney's Office, the City Administrator's Office and Councilmember McElhaney's Office coordinated efforts on this report and authorizing legislation

## COST SUMMARY/IMPLICATIONS

There is no cost in adopting this ordinance and the cost summary/implications for each ground lease or sale will be evaluated when such disposition is brought to Council.

---

[10] The Office of Project Implementation, Real Estate Services Division is the designated office that coordinates all property issues (including the purchase, leasing, sale, and exchange of property for the City). If a parcel is being considered for possible exchange, sale or for use as a leased asset, Real Estate must follow strict procedures for analyzing the property. These procedures are governed by several local, state, and Federal laws including:

- Surplus Land Act (California Government Code 54220 et seq.);
- Oakland City Charter (specifically Sections 219 and 2702);
- Oakland City Policies for the Sale and Lease of Property (specifically Ordinances 10142 C.M.S., 11602 C.M.S., 11603 C.M.S., and 11722 C.M.S.);
- Oakland Municipal Code 2.41 (Disposition of City-Owned Property for Development).
- California Redevelopment Law (California Health & Safety Code 33000 et seq.);
- California Department of Transportation Right of Way Manual (esp. Chapter 16 – "Excess Lands"); and
- Any relevant Federal laws or regulations.

## SUSTAINABLE OPPORTUNITIES

***Economic***: Adopting a general policy of leasing rather than selling does not by itself have specific economic impact. Each potential sale or lease transaction would be analyzed for its economic impact on the city/city.

***Environmental:*** Environmental impacts would be analyzed based on each individual transaction.

***Social Equity***: Social equity might be enhanced if the city/city adopted a general policy of retaining city/city property for the benefit of the public.

## CEQA

This action of adopting a general policy about ground leasing 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).

For questions regarding this report, please contact Kiran Jain, Senior Deputy City Attorney, at 510-238-3837.

Respectfully submitted,

Henry Gardner
City Administrator

Lynette Gibson McElhaney
City Councilmember, District 3

Barbara J. Parker
City Attorney

Prepared by: Dianne Millner and Kiran Jain
Office of the Oakland City Attorney

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 NOV 25 PM 4:11

APPROVED AS TO FORM AND LEGALITY:

Office of the City Attorney

# OAKLAND CITY COUNCIL

## RESOLUTION No. ____________ C.M.S.

**INTRODUCED BY:**

**CITY COUNCILMEMBER LYNETTE GIBSON MCELHANEY, INTERIM CITY ADMINISTRATOR HENRY GARDNER AND CITY ATTORNEY BARBARA PARKER**

---

**Resolution Establishing a General Policy to Lease, Rather Than Sell, City Property**

**Whereas**, the City of Oakland was incorporated in 1852 and has endured and prospered for more than one and one-half centuries; and

**Whereas**, the Charter of the City of Oakland establishes a municipal corporation to provide for the public welfare, general good and advantage of this great City and its residents; and

**Whereas**, the City of Oakland is a proud and progressive commonwealth, a municipal government, charged with the responsibility to protect and advance the public welfare, the general good and advantage; and

**Whereas**, this commonwealth has the important responsibility of securing and maintaining public assets to assure its ability to preserve the commonwealth for all Oaklanders and our posterity; and

**Whereas**, since its inception the City of Oakland has acquired public assets including real property and developed those assets and in some cases sold some of its assets to further the public good; and

**Whereas**, the City sometimes sells City-owned real property to third parties for a variety of reasons, including transfers after the City determines that the land is not needed for City purposes; and

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

4

COMMUNITY & ECONOMIC DEVELOPMENT CMTE
DEC 04 2014

1514774

**Whereas,** on June 27, 2013 the Oakland City Council adopted Ordinance No. 13185 C.M.S. amending the OMC to add a new chapter 2.41 entitled "Disposition of City-Owned Property for Development" to codify and govern the City's disposition of property; and

**Whereas**, due to development and the City's ideal location in the center of the Bay Area, its physical beauty, its diversity and its ideal climate, the value of property in the City of Oakland has continued to increase, the real property available for the City to purchase has decreased substantially and the prospects for acquiring additional assets in the future therefore have diminished; and

**Whereas**, the City has determined that it is in the City's best interest to retain as much City-owned property as feasible for the benefit of the public; and

**Whereas**, the Oakland City Council desires to preserve these precious assets which once sold can never be replaced, and will no longer be a resource for the benefit of the commonwealth, i.e., the public welfare in the future; and

**Whereas,** leasing City property allows the City to realize the benefits of increases in property value and to control the future use of the property after the expiration of the lease as well as provides the City greater ability to enforce City laws and policies; and

**Whereas**, the City will continue to comply with all legal requirements that may apply to transfers of City-owned property; and

**Whereas**, adopting this resolution has no current fiscal impact because adopting a general policy in and of itself has no fiscal impact; and

**Whereas,** the City hereby finds and determines that when the City determines it advisable or necessary to transfer City-owned property, it shall be the general policy of the City to lease rather than sell the property; and

**Whereas**, other public agencies, such as Bay Area Rapid Transit ("BART"), have a written transit oriented development policy that generally "favor[s] long-term ground leases, rather than the sale of property," as adopted by the BART Board on July 14, 2005; and

**Whereas**, the City and County of San Francisco and the Port of Oakland have a longstanding practice of entering into ground leases versus selling their property; and

**Whereas,** the City retains the power to make exceptions to this policy on a case-by-case basis; and

**Whereas,** prior to selling City property, staff shall make a recommendation to sell such property and provide the rationale for selling instead of leasing such property, and the Council shall make a finding by resolution that selling the property is in the best interests of the City; and

**Whereas,** the City shall continue to comply with all legal requirements that may apply to transfers of City-owned land; 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; and

**Whereas,** the City Charter requires that the Council approve by ordinance any lease (longer than one year) or, a sale, if determined to be in the City's best interest, of property; now therefore be it

**Resolved,** that the City Council finds and determines that when the City deems it advisable or necessary to transfer City-owned property, it shall be the general policy of the City to lease rather than sell the property; and be it

**Further Resolved,** that exceptions to this general policy may be made on a case-by-case basis; and be it

**Further Resolved,** that when the City Administrator determines it is necessary or in the City's best interest to sell City property, the City Administrator shall make a recommendation to the City Council to sell such property and provide reasons to support a sale rather than a lease of the Property; and be it

**Further Resolved,** that after considering the City Administrator's recommendation, the City Council shall make a finding by resolution or ordinance that a sale of the property is in the best interests of the City as a condition to approving the sale.

IN COUNCIL, OAKLAND, CALIFORNIA,____________________, 2014

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON-MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST:______________________________

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

4

COMMUNITY & ECONOMIC
DEVELOPMENT CMTE
DEC 04 2014