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CITY OF OAKLAND

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

June 25, 2019

HONORABLE CITY COUNCIL
Oakland, California

Subject: An Ordinance Amending Chapters 2.41 and 2.42 of the Oakland Municipal Code Governing the City's Acquisition and Disposition of Real Property ("Real Estate Ordinance") to Codify the City's Policy to Lease City Property Instead of Selling or Otherwise Disposing of City Property – June 25, 2019 Community and Economic Development Committee

Dear Council President Kaplan and Members of the City Council:

We ask the Council to adopt the subject ordinance amendments to codify the City's Policy to lease City property instead of selling or otherwise disposing of City property.

The intent of the proposed changes to the Real Estate Ordinance is to codify the Council's policy to lease properties, as opposed to sell them, and create a transparent process that requires the City Administrator to seek Council input from inception of a proposed transaction. More specifically, the amendments:

- 1) Mandate a lease of City property, unless the Council makes, by supermajority, requisite findings for a sale;
- 2) Require that the City Administrator seek pre-authorization to commence negotiations for any disposition of property, unless it falls expressly within the City Administrator's delegated authority;
- 3) Require that the City Administrator provide an annual report of transactions effectuated under her delegated authority; and
- 4) Make other technical corrections to the ordinance to clarify definitions, in kind consideration, and the overall process.



HONORABLE CITY COUNCIL
June 25, 2019
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We look forward to discussing this item at the June 25, Community and Economic Development Committee meeting.

Respectfully submitted,

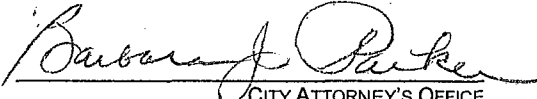
Loren Taylor
Councilmember, District 6

Nikki Fortunato Bas
Councilmember, District 2

Sheng Thao
Councilmember, District 4

19 JUN 13 PM 4:03

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS
NIKKI FORTUNATO BAS, LOREN TAYLOR AND SHENG THAO

AN ORDINANCE AMENDING CHAPTERS 2.41 AND 2.42 OF THE OAKLAND MUNICIPAL CODE GOVERNING THE CITY'S ACQUISITION AND DISPOSITION OF REAL PROPERTY ("REAL ESTATE ORDINANCE") TO CODIFY THE CITY'S POLICY TO LEASE CITY PROPERTY INSTEAD OF SELLING OR OTHERWISE DISPOSING OF CITY PROPERTY

WHEREAS, as a home rule charter city, the City has a right and power to make and enforce all laws and regulations that are its municipal affairs, including laws related to the acquisition and disposition of real property by the City; and

WHEREAS, Section 1001 of the Oakland City Charter provides that the City Council shall have authority to lease or sell real property owned or controlled by the City in accordance with such uniform procedure as it shall adopt by ordinance; and

WHEREAS, state law authorizes cities to purchase, lease, receive, hold and enjoy real property and dispose of real property for the common benefit; and

WHEREAS, on January 6, 2015, the City Council adopted Ordinance No. 13287 C.M.S. pursuant to Sections 1001 and 219 of the Oakland City Charter to add Sections 2.41 and 2.42 of the Oakland Municipal Code governing the acquisition and disposition of real property; and

WHEREAS, the City has an uncodified policy to lease, or enter into agreements for the development of, City properties instead of selling or otherwise disposing of City property whenever feasible; and

WHEREAS, the City Council desires to codify that policy and to create a threshold value and size above which the City must lease or sell City property for development; and

WHEREAS, it is in the City' best interest for the Council to make findings regarding the economic benefits and conformance with City policies or development goals prior to waiving the requirement to enter into a lease or agreement for development of City property; and

WHEREAS, the City Council desires to require the City Administrator to seek authorization from Council prior to initiating negotiations for the sale or lease for development of City property unless the sale is within the City Administrator's delegated authority under this amended Ordinance; and

WHEREAS, the City Council desires to clarify the City Administrator's authority relating to lease amendments and the calculation of conveyance prices; and

WHEREAS, the City Council wishes to update and revise Sections 2.41 and 2.42 to make technical changes;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines the foregoing recitals to be true and correct and an integral part of the City Council's decision, and hereby adopts such recitals as findings.

SECTION 2. Chapter 2.41 of the Oakland Municipal Code, added by Ordinance No. 13287 C.M.S., entitled "Acquisition and Lease of Real Property by City", is hereby amended as shown on **Exhibit A** attached hereto and incorporated by reference herein. Additions to the Oakland Municipal Code are shown as underline and omissions are shown as ~~strikethrough~~.

SECTION 3. Chapter 2.42 of the Oakland Municipal Code, added by Ordinance No. 13287 C.M.S., entitled "Disposition of Real Property by City", is hereby amended as shown on **Exhibit B** attached hereto and incorporated by reference herein.

SECTION 4. The City Council finds and determines that the adoption of this Ordinance is not an activity subject to the California Environmental Quality Act, since it will not result in a physical change to the environment. Any future actions authorized by this Ordinance that are subject to CEQA will be separately reviewed for compliance with CEQA.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 6. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE AMENDING CHAPTERS 2.41 AND 2.42 OF THE OAKLAND MUNICIPAL CODE GOVERNING THE CITY'S ACQUISITION AND DISPOSITION OF PROPERTY ("REAL ESTATE ORDINANCE") TO CODIFY THE CITY'S POLICY TO LEASE CITY PROPERTY INSTEAD OF SELLING OR OTHERWISE DISPOSING OF CITY PROPERTY

This Ordinance amends Chapter 2.41 of the Oakland Municipal Code to make technical changes relating to the acquisition of real property by the City by purchase or lease. This Ordinance also amends Chapter 2.42 for the disposition of real property by sale or lease to codify City policy to lease or sell for development City property rather than sell City property and to clarify the City Administrator's authority to sell or lease City property.

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Chapter 2.41

ACQUISITION AND LEASE OF REAL PROPERTY BY CITY

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.

(Ord. No. 13287, § 2, 1-6-2015)

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 (as reasonably determined by the City Administrator or his or her designee) for the real property does not exceed

Exhibit A

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.

(Ord. No. 13287, § 2, 1-6-2015)

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."

(Ord. No. 13287, § 2, 1-6-2015)

2.41.040 - Acquisition of real property interests by eminent domain.

The City has the right and power to acquire interests in real property, whether fee title, leasehold interests or easements, 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.

(Ord. No. 13287, § 2, 1-6-2015)

2.41.050 - Lease of real property by City.

In addition to acquisition by eminent domain pursuant to Section 2.41.040, tThe 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, unless such leases

Exhibit A

are acquired through the City's power of eminent domain, in which case Section 2.41.040 shall apply.

(Ord. No. 13287, § 2, 1-6-2015)

2.41.060 - Acquisition of easements.

In addition to acquisition by eminent domain pursuant to Section 2.41.040, tThe City is authorized to acquire easements, equitable servitudes, and right-of-way interests in real property by grant, purchase, gift, devise, or 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 (as reasonably determined by the City Administrator or his or her designee) 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, unless such acquisitions are acquired through the City's power of eminent domain, in which case Section 2.41.040 shall apply.

(Ord. No. 13287, § 2, 1-6-2015)

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 or state-funded projects have been acquired and that the projects have qualified for the receipt of federal and/or state funds, as the case may be.

(Ord. No. 13287, § 2, 1-6-2015)

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.

(Ord. No. 13287, § 2, 1-6-2015)

Exhibit A

2.41.090 - Implementation.

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

(Ord. No. 13287, § 2, 1-6-2015)

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:

"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).

"Conveyance price" means the total consideration given or provided to the City by the buyer or on behalf of the buyer in exchange for the property disposition, whether paid in cash, cash equivalent, in-kind consideration, exchange, credit, or anything else of value to the City.

"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 in which the City grants a real property interest to other entities or persons.

"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.

"In-kind consideration" or "in-kind services" means any consideration other than cash, the fair value of which shall be reasonably determined and documented by the City Administrator or his or her designee based on factors such as the cost or selling price of a non-cash item, opinions of experts, the value of services to the City and other

Exhibit B

reasonable accounting methods. For purposes of this chapter, in-kind services include benefits or values the provider renders to the City or the community at large in lieu of or in addition to payment of cash. This may include, but not be limited to, property security and maintenance, social and cultural benefits to the community, or other appropriate services.

"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, option interest, security interest, 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 ether in-kind 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.

"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 Chapter 17.128~~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.

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(Ord. No. 13287, § 3, 1-6-2015)

2.42.020 - Implementation.

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

(Ord. No. 13287, § 3, 1-6-2015)

Article II - Sale of City-Owned Real Property, Generally Below Threshold Amounts; Grant of Easements

2.42.030 - Applicability.

This Article shall apply to all only to a) fee title sales of real property by the City, except for the where the fair market value of the real property is below five hundred thousand (\$500,000) dollars and the total area of the real property is below ten thousand (10,000) square feet; or b) the grants of easements. The sale of real property for development shall be governed solely by Article IV below. All other dispositions of real property shall be governed by Articles III, IV, or V, as the case may be.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.040 - ~~Compliance with state laws~~ City Council Authorization.

The City Administrator shall seek authorization from the City Council prior to initiating negotiations for the sale of any City real property, unless such sale is occurring as a result of a condemnation proceeding or is within the delegated authority to the City Administrator granted in this Chapter. The request for authorization shall describe the property, benefits and costs (if any) of the proposed sale, anticipated financial terms. The Council shall grant such authorization by resolution if the Council reasonably determines that the anticipated benefits of the sale will outweigh the costs to the City. To the extent Section 2.42.050B applies, the Council authorization shall include the requisite findings for the waiver of the competitive process. 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 Sections 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 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 to housing sponsors, 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.

(Ord. No. 13287, § 3, 1-6-2015)

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2.42.050 - Process for selling City real property.

A. Competitive Process. No real property shall be sold by the City ~~except until~~ after compliance with Section 2.42.040 and all state laws governing the sale of property, including the Surplus Lands Act (California Government Code Sections 54220, et seq.), to the extent applicable. If after compliance with such state laws, the real property remains unsold, then the City shall enter into negotiations to sell the property only 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, but subject to compliance with applicable state laws, 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~~ theas a result of either such entity's exercise of its power of eminent domain through the adoption of a resolution of necessity pursuant to California Code of Civil Procedure Section 1245.210, et seq. or a negotiated settlement for just compensation in accordance with a statutory offer made by such entity pursuant to California Government Code 7267.2;

Exhibit B

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; or
 4. Prior to commencement of negotiations with any prospective buyer and as a part of the authorization granted pursuant to Section 2.42.040 (The City Council has made a finding and determination that calling for bids or offers on a competitive basis for such real property 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. Any such ordinance shall include a finding that the sale is in the best interests of the City.
- D. Administrative Authority. Notwithstanding the above, but subject to compliance with applicable state laws, 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 exercising its authority under the power of eminent domain through appropriate legislative actions;
 2. The real property has a fair market value, as determined pursuant to Section 2.42.060 below, 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 and there has been a delegation of the authority to sell the real property to the administrative staff of the respective agency, by resolution and to the extent legally required, the oversight board of ORSA, 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, except that the City Administrator shall provide an annual report to the City Council of all sales effectuated by the City Administrator pursuant to the authority granted herein.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.060 - Sale price.

Real property must be sold for a price, payable in cash or ~~other~~ in-kind consideration, equal to or exceeding the property's fair market value as determined by

Exhibit B

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.

(Ord. No. 13287, § 3, 1-6-2015)

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 Bureaus, Director of Transportation, Director of Public Works, Director of Economic, Workforce and Development, 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.

(Ord. No. 13287, § 3, 1-6-2015)

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 exercising its authority under the power of eminent domain through appropriate legislative actions;
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;
4. The easement is to replace an equivalent right an easement holder had prior to a relocation caused or requested by the City; or
45. 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.

Exhibit B

Any grant of easement must be in exchange for a conveyance price, payable in cash or ~~other in-kind~~ 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, (2) the easement is to replace an equivalent right the easement holder had prior to a relocation caused or requested by the City, or (2) a state or federal government agency requires the grant of easement for less than fair market value.

(Ord. No. 13287, § 3, 1-6-2015)

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 conveyed 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.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.100 - Process for leasing City real property.

- A. Notice. Notice of the proposed lease of City real property 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 conveyed 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 enacting 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 exercising its authority under the power of eminent domain through appropriate legislative actions;
 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 there has been a delegation of authority to lease the real property

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~~Redevelopment Agency or ORSA governing body delegated the authority to lease the real property to the administrative staff of the respective agency, by resolution and to the extent legally required, the oversight board of ORSA, 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. The City Administrator or his or her designee may execute amendments prior to the expiration or termination of a lease if (a) the aggregate of such amendments would not exceed the limits described in Section 2.42.100.C, taking into account the entire lease, or (b) the authority for any such amendment was delegated by the City Council to the City Administrator in an Ordinance enacted under Section 2.42.100.B. No further City Council action is required for such leases or lease amendments, except that the City Administrator shall provide an annual report to the City Council of all new leases, extensions to existing leases and amendments to existing leases negotiated by the City Administrator pursuant to the authority granted herein.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.110 - Rent.

Real property must be leased for a rent or fee, payable in cash or ~~other in-kind~~ 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. 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 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 and cultural benefits to the community, or other appropriate services. If the City Administrator or his or her designee reasonably determines that the conveyance price is equal to or greater than the property's fair market value, then no further Council findings are required for the City Administrator to exercise his or her authority under Section 2.42.100.C.~~

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(Ord. No. 13287, § 3, 1-6-2015)

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 Bureaus, Director of Transportation, Director of Public Works, Director of Economic Workforce Development, 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.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.130 - Limitations on lease term.

Per Section 1001 of the Charter, as amended, no lease of City real property may be for a term greater than ~~sixty-six~~ninety nine (9966) years.

(Ord. No. 13287, § 3, 1-6-2015)

Article IV - Sale or Lease of City-Owned Real Property for Exceeding Thresholds or For Development

2.42.140 - Intent and application.

This article is intended to facilitate the City's sale, lease, or disposition of real property that exceeds the thresholds set forth in Article II and/or is for development to promote the economic development, housing, environmental, and community development 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 as well as any fee title conveyance of real property exceeding the thresholds set forth in Article II.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.150 - Authority City Council authorization to initiate negotiations.

~~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.~~

A. The City of Oakland shall only lease City property unless the City Council makes findings in accordance with this Chapter that there are exceptional reasons to sell

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such City property pursuant to findings made by the City Council in accordance with this Ordinance.

- B. The City Administrator shall seek authorization from the City Council prior to initiating negotiations for the disposition of any City real property for development. The request for authorization shall describe the property, benefits and costs (if any) of the proposed disposition, the development vision for the site, timeline for development, proposed community engagement process to obtain feedback on the development vision, and any anticipated minimum financial criteria for the disposition structure. To the extent the City Administrator seeks to sell instead of lease the real property for development, the request for authorization must include reasons for such request as well as factual bases to support the determinations required under Section 2.42.160.B.
- C. The Council authorization, which shall be effectuated by resolution, shall grant the foregoing authorization to the City Administrator and shall, to the extent Sections 2.42.160.B and/or 2.42.170.B apply, include the requisite findings for the waiver of the requirement(s) to lease versus sell and/or implement a competitive solicitation process, as the case may be.
- D. Any waiver granted under this Section shall be effective only if approved by a super majority of the Councilmembers present at the meeting at which the waiver is granted.

(Ord. No. 13287, § 3, 1-6-2015)

2.42.160 - Compliance with State laws, if applicable; Requirement to lease.

- A. 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.
- B. The City shall convey only long-term leasehold estates for any City-owned real property dispositions under this Article IV. The City Council may waive this requirement for any specific real property only upon a determination, in any resolution adopted pursuant to Section 2.42.150, that disposition through a fee title sale versus long-term leasehold estate conveyance (1) will generate substantially more economic benefits to the City, as demonstrated through independent, objective financial analysis and is otherwise in the best interests of the City when all factors are considered, or (2) will expressly prevent the actualization of the City's policy and/or development goals for the real property, as demonstrated by independent, objective analysis.

(Ord. No. 13287, § 3, 1-6-2015)

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2.42.170 - Process for disposition of property for development.

- A. Upon receiving Council authorization pursuant to Section 2.42.150, the City Administrator shall comply with all state laws governing the sale of property, including the Surplus Lands Act (California Government Code Sections 54220, et seq.), to the extent applicable.
- B. If after compliance with applicable state laws, the real property remains available for disposition, then tThe 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 (or purchase and development proposals, if the requirements of Section 2.42.160B have been met).
- BC. 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-Council, in its authorization granted pursuant to Section 2.42.150, has determined 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 in its request for authorization as required under Section 2.42.150, and the City Council shall make findings in support of any waiver of the NODO process as a condition to approving-granting any transactions such authorization.
- CD. 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 including specific plans and other land use policies and goals.
 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

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affordable to low and moderate income households, eliminating physical or economic blight, and contributing to the economic vitality of the neighborhood.

8. The compatibility of the proposed development with the City's policies and objectives, including cultural goals, economic development strategies and plans, and equity metrics.

9. Other factors, as the City Administrator may deem applicable.

DE. 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 as to which proposed developer and on what terms the City should enter into an exclusive negotiating agreement to negotiate the final price and terms of the development and disposition of the real property. The City Council may shall evaluate the City Administrator's recommendation development proposal and any other proposals based on the considerations set forth in subsection D above and shall authorize, by resolution, the City Administrator to enter into an exclusive negotiating agreement with one of the developers. Such authorization shall be for a specified negotiating period and development project. The City Administrator shall return to the City Council for authorization of a final lease (or sale) prior to the conclusion of the authorized negotiating period. If the City Administrator is unable to negotiate final disposition terms before the termination of the negotiating period, he or she shall seek authorization to extend, by resolution, the negotiating period. The City Administrator shall not have the authority to initiate or continue negotiations with a proposed party for any City property subject to this Article IV without procuring the requisite City Council authorization set forth herein.

EF. Upon negotiation of the final terms of any proposed disposition, the City Administrator shall seek approval of the City Council of the proposed lease (or sale). Per the City Charter, any such approval of a lease for development (longer than one year) or a sale of the property requires a Council ordinance including requisite findings for such sale pursuant to Section 2.42.160B.

(Ord. No. 13287, § 3, 1-6-2015)

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

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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.

(Ord. No. 13287, § 3, 1-6-2015)

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. Subject to City Council authorization as required herein, 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.

(Ord. No. 13287, § 3, 1-6-2015)

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;

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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 maximized 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.

(Ord. No. 13287, § 3, 1-6-2015)

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

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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.

(Ord. No. 13287, § 3, 1-6-2015)

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.

(Ord. No. 13287, § 3, 1-6-2015)

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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. 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.

(Ord. No. 13287, § 3, 1-6-2015)