



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Alexa Jeffress,  
Director, Economic and  
Workforce Development

**SUBJECT:** 21<sup>st</sup> Street Bridge & Tunnel Franchise  
Transfer

**DATE:** June 7, 2021

City Administrator Approval

Date: Jun 23, 2021

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance To:**

**(1) Consent To The Transfer Of The Franchise To Construct, Maintain And Operate A Bridge And Tunnel At 21<sup>ST</sup> Street, Pursuant To Ordinance No. 8005, C.M.S. Dated July 24, 1969, As Amended By Ordinance No. 12733 C.M.S. Dated March 7, 2006, To CIM-Oakland 1 Kaiser Plaza LP And BA2 300 Lakeside LLC; And**

**(2) Amend Said Ordinance To:**

**(A) Increase The Amount Of The Liability Insurance From \$1,000,000 To \$2,000,000 For Property Damage And Bodily Injury;**

**(B) Increase The Annual Franchise Consideration From \$1,500 To \$2,500 Per Year;**

**(C) Authorize The Council To Terminate The Franchise If Grantee Fails To Comply With Any Term Or Condition Of The Franchise; And**

**(D) Clarify That Grantee Disclaims Any Right, Title, Or Interest In Or To Any Portion Of The Public Right-Of-Way.**

## EXECUTIVE SUMMARY

Approval of the recommended action would transfer to the current owners of these buildings an existing franchise that allows for the continued passage of a bridge over and tunnel under 21<sup>st</sup> Street connecting the Ordway Building at One Kaiser Plaza and The Kaiser Center at 300 Lakeside Drive. This action was requested in connection with the recent sale of The Kaiser Center to BA2 300 Lakeside LLC (BA2), a subsidiary of TMG Partners, who signed a long-term lease with Pacific Gas & Electric Company (PG&E) in 2020 to relocate the utility's headquarters to the property.

City Council  
July 6, 2021

The franchise was originally granted by City Council in 1969 and subsequently transferred to new property owners in 2006. The recommended action would amend these ordinances to include all other named grantees in the chain of title to properly record all prior transfers. The recommended action would additionally increase the amount of the liability insurance from \$1,000,000 to \$2,000,000 for property damage and bodily injury; increase the annual franchise consideration from \$1,500 to \$2,500 per year, to be adjusted every five years based on the relative increases in the Consumer Price Index; authorize City Council to terminate the franchise if grantee fails to comply with its terms and conditions; and clarify that grantee disclaims any right, title, or interest in or to any portion of the public right-of-way.

### **BACKGROUND/LEGISLATIVE HISTORY**

In 1969, Kaiser Center Properties and Kaiser Center Properties Inc. were the original owners of two blocks of real property known as the "Ordway Building" at One Kaiser Plaza (Assessor's Parcel Number 008-653-019-03) and "The Kaiser Center" at 300 Lakeside Drive (Assessor's Parcel Number 008-652-001-05). These properties were separated by 21<sup>st</sup> Street.

In 1969 the City granted a franchise (the "Franchise") to Kaiser Center Properties and Kaiser Center Properties Inc. to construct, install, operate, maintain, repair and renew an enclosed pedestrian bridge and tunnel (the "Franchise Property") for the purpose of transporting people and material between the Ordway Building and The Kaiser Center across and under 21<sup>st</sup> Street between Valdez and Harrison Streets. Pursuant to Ordinance No. 8005 C.M.S. ("Original Ordinance") adopted on July 24, 1969 (**Attachment A**), this action was "deemed to be in the best public interest to avoid traffic congestion on 21st Street by keeping as much as possible the movement of people, supplies and equipment between the two buildings off of said Street." The Franchise Property presently includes the existing pedestrian bridge lying across and above 21<sup>st</sup> Street and the existing tunnel presently used as storage space lying below and across 21<sup>st</sup> Street.

The Original Ordinance established the term of the Franchise as 70 years commencing July 24, 1969 and ending July 23, 2039 with annual consideration of \$270 per year. The Original Ordinance required that the City consent to future transfers of the Franchise Property. This proposed Ordinance does not extend the term of the Franchise.

In 2006, the City consented to the transfer of the franchise to Prentiss Properties Acquisition Partners L.P. as the then-owner of the Ordway Building and SIC-Lakeside Drive LLC as the then-owner of The Kaiser Center and all prior transfers, which had not been properly noticed to the City. This was done pursuant to Ordinance No. 12733 C.M.S. dated March 7, 2006 ("Second Ordinance"), a copy of which is attached as **Attachment B**.

The Second Ordinance amended the Original Ordinance to increase the aggregate amount of required liability insurance from \$1,000,000 to \$25,000,000 and increase the annual franchise consideration from \$270 to \$1,500 per year, which was to be adjusted every five years until the end of the remaining term of the franchise.

Ownership of the Ordway Building and The Kaiser Center has transferred several times since the Second Ordinance, each time without obtaining the City's prior written consent to the transfer of the Franchise Property. These transfers are detailed in **Attachments C** and **D**. CIM-Oakland 1 Kaiser Plaza, an affiliate of the CIM Group, Inc. (CIM) is the current owner of the Ordway Building as of October 8, 2008, and BA2, a subsidiary of TMG Partners, is the current owner of The Kaiser Center as of October 29, 2020.

## **ANALYSIS AND POLICY ALTERNATIVES**

The recommended action would provide for the City's consent to the transfer of the Franchise Property to CIM and BA2 as the current owners, as well as to all other prior transfers since the Second Ordinance. This would allow CIM and BA2 the right to utilize the Franchise Property and thereby fulfill the intent of the Original Ordinance to "reduce traffic congestion on 21<sup>st</sup> Street by keeping as much as possible the movement of people, supplies and equipment between the two buildings off of 21<sup>st</sup> Street."

In so doing, the recommended action would also update certain aspects of the Franchise as follows:

- Increase the amount of the liability insurance from \$1,000,000 to \$2,000,000 for property damage and bodily injury, as recommended by the City's Risk Manager;
- Increase the annual consideration from \$1,500 to \$2,500 per year, to be adjusted every five years based on the relative increases in the Consumer Price Index;
- Authorize City Council to terminate the Franchise if grantee fails to comply with any term of condition of the Franchise; and
- Clarify that Grantee disclaims any right, title or interest in or to any portion of the public right-of-way.

The transfer of the Franchise would be effective upon passage of the recommended ordinance, confirmation that the bridge and tunnel are safe, sightly and in good repair, and filing of certificates of acceptance from CIM and BA2 with the City Clerk and City Real Estate staff memorializing CIM and BA2's acceptance of the terms of the Franchise. If CIM or BA2 fail to file the certificates in a timely manner, the proposed ordinance would be void and the City would be entitled to exercise all rights and remedies under the Original Ordinance.

City staff have reviewed BA2 and CIM's insurance certificates (see **Attachments E** and **F**, respectively) and have confirmed that they satisfy the recommended new insurance requirements.

The recommended action will allow the existing bridge and tunnel to continue conveying people, supplies and equipment across 21<sup>st</sup> Street, thereby reducing congestion on 21<sup>st</sup> Street, consistent with the intent of the Original Ordinance. The Ordway Building and The Kaiser Center contain over 1.4 million square feet of class A office space attached in part by the Franchise Property to a 1,300+ space parking garage. Not consenting to the transfer of the Franchise would reduce the utility of these buildings to their occupants and increase congestion and reduce pedestrian safety on 21<sup>st</sup> Street.

The recommended action also updates the Original Ordinance and Second Ordinance in ways that better serve the City's interests. Increasing the required insurance coverage will provide greater protection for the City from claims arising from the Franchise. Increasing the annual

consideration will increase revenues to the City while remaining on par with the Original Ordinance and Second Ordinance as adjusted for inflation. Giving City Council authority to terminate the Franchise if grantee fails to comply with any term or condition will ensure accountability and align the Franchise with the terms of a major encroachment permit. And finally, clarifying that grantee disclaims any right, title, or interest in or to any portion of the public right-of-way will ensure that the City controls absolutely the public right-of-way.

### **FISCAL IMPACT**

Grantee would pay \$5,677 in processing cost to the City as required by the Master Fee Schedule, and this amount would be placed in the General Purpose Fund (1010), Real Estate Organization (85231), Other Revenue: Administrative Fees Account (48726), Real Estate Surplus Property Project (1000235), Real Estate Program (PS32). Grantee would pay the recommended franchise consideration of \$2,500 annually, to be adjusted every five years based on the relative increases in the Consumer Price Index, and this amount would be placed in the General Purpose Fund (1010), Treasury Operations Unit Organization (08721), Miscellaneous Franchise Taxes Account (41619), DP080 Administrative Project (1000007), Financial Management Program (IP59).

### **PUBLIC OUTREACH / INTEREST**

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures.

### **COORDINATION**

The Economic & Workforce Development Department's Real Estate Division developed the recommended action in consultation with the Office of the City Attorney and City Administrator's Office. The agenda report and legislation have been reviewed by the Budget Bureau and the Office of the City Attorney.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The actions authorized by this Resolution are exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines section 15301 (Existing Facilities) because no improvements will be made to the franchise property and the use of the franchise property under the Existing Ordinance will not change.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The recommended action will allow the properties to continue to function as a large, class A office complex that brings multiple economic benefits to the City. PG&E is currently relocating its headquarters into The Kaiser Center and will be one of the City's largest employers. The City will also continue to collect an updated annual franchise fee.

**Environmental:** There are no environmental impacts associated with this action because the tunnel and bridge traversing 21<sup>st</sup> Street are already in place and are not expected to be removed for the remaining term of the franchise.

**Race & Equity:** The recommended action will help to reduce traffic congestion and increase pedestrian safety on 21<sup>st</sup> Street to the benefit of all Oaklanders.

### **ACTION REQUESTED OF CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance To:

(1) Consent To The Transfer Of The Franchise To Construct, Maintain and Operate A Bridge And Tunnel At 21<sup>ST</sup> Street, Pursuant To Ordinance No. 8005, C. M.S. Dated July 24, 1969, As Amended By Ordinance No. 12733 C.M.S. Dated March 7, 2006, To CIM-Oakland 1 Kaiser Plaza LP And BA2 300 Lakeside LLC; And

(2) Amend Said Ordinance To:

(A) Increase The Amount Of The Liability Insurance From \$1,000,000 To \$2,000,000 For Property Damage And Bodily Injury;

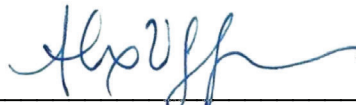
(B) Increase The Annual Franchise Consideration From \$1,500 To \$2,500 Per Year;

(C) Authorize The Council To Terminate The Franchise If Grantee Fails To Comply With Any Term Or Condition Of The Franchise; And

(D) Clarify That Grantee Disclaims Any Right, Title, Or Interest In Or To Any Portion Of The Public Right-Of-Way.

For questions regarding this report, please contact Brendan Moriarty, Real Property Asset Manager, Real Estate Asset Management Division, (510) 238-6354, [bmoriarty@oaklandca.gov](mailto:bmoriarty@oaklandca.gov).

Respectfully submitted,



ALEXA JEFFRESS

Director, Economic & Workforce Development  
Department

Reviewed by:

Brendan Moriarty, Real Property Asset Manager  
Real Estate Asset Management Division  
Economic & Workforce Development Department

Prepared by:

Frank Schobert, Real Estate Agent  
Real Estate Asset Management Division  
Economic & Workforce Development Department

Attachments (6):

A: Ordinance No. 8005 C.M.S., July 24, 1969

B: Ordinance No. 12733 C.M.S., March 7, 2006

C: Deeds in Chain of Title for One Kaiser Plaza (Ordway Building)

D: Deeds in Chain of Title for One Kaiser Plaza (300 Lakeside Drive)

E: BA2's Certificate of Insurance

F: CIM's Certificate of Insurance