

CITY OF OAKLAND

COUNCIL AGENDA REPORT

050312- PM12:48

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: City Council Office
DATE: November 8, 2005

RE: **ORDINANCE AUTHORIZING A SUBLEASE AGREEMENT WITH BORDER TOWN SKATE PARK INC., FOR THE SOLE AND EXCLUSIVE PURPOSE OF OPERATING A SKATE BOARD PARK LOCATED UNDER STATE HIGHWAY 580 AT THE NORTH WESTERN END OF LOUISE STREET, OAKLAND, FOR \$100.00 FOR THE TERM OF THE LEASE, PLUS PROVISION OF REGULAR LITTER CLEANUP SERVICES FOR THE STATE DEPARTMENT OF TRANSPORTATION FOR A TERM OF THIRTY (30) MONTHS, WITH AN OPTION FOR ONE THIRTY (30) MONTH EXTENSION; AND**

AN ORDINANCE ADDING TO CHAPTER 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, NEW SECTIONS 5.90.010 THROUGH 5.90.040 (OR OTHER APPROPRIATE SECTION NUMBERING) RELATING TO REGULATION OF SKATE PARK FACILITIES

SUMMARY

An Ordinance has been prepared authorizing the City Administrator, or her designee, to enter into a Sublease Agreement with Border Town Skate Park Inc., and an Ordinance has been prepared adding provisions to the Municipal Code to provide rules and regulations for the safe operation of Skate Board Parks within the City of Oakland. Passage of the Ordinance providing for the Sublease of City land for a skate board park is dependant upon passage of the Ordinance adding provisions for the operation of Skate Board Parks within the City.

Staff recommends the passage and adoption of both ordinances. Adoption of the second Ordinance, adding provisions for Skate Board Parks in the Municipal Code, will allow the City to sublease the land, which the City leased from Caltrans, for a skate board park. The sublease and the proposed addition to the Municipal Code is consistent with the following 2005-07 Goals and Objectives of City Council and Mayor: #2D (Build Community and Foster Livable Neighborhoods), #3A (Ensure that all Oakland Youth and Seniors have the opportunities to be Successful).

Item #: _____
CEDA Committee
November 8, 2005

FISCAL IMPACT

There is no fiscal impact to the City. Sub-Lessee (Border Town Skate Park, Inc.), as a condition of the sublease, agrees that the Sub-Lessee shall be solely responsible for all costs and liabilities, with no recourse to City. Sub-Lessee has and shall assume all economic and financial risks and obligations under the Sublease. The City shall have no fiscal impacts resulting from the Master Lease or this Sublease.

BACKGROUND

Last summer the Border Town Skate Park Inc., began construction of a skate board park under the State Highway 580 at the end of Louise Street in Oakland without benefit of a lease from Caltrans. On discovery, Caltrans closed off access to any further construction. Caltrans refusal to negotiate a direct lease with the Border Town Skate Park Inc., resulted in the corporation enlisting the help of various Federal, State and Local elected officials. The City of Oakland then entered into negotiations with Caltrans for the lease of the land. The agreement provided for a sublease to Border Town Skate Park Inc. Negotiations have been on going for over 5 weeks and a final draft of the Master Lease with Caltrans has been finalized but not executed as of the week October 10, 2005, being under final legal review. A Sublease has been drafted and is presently awaiting the adoption of the above two (2) ordinances. The City needs to amend the Municipal Code by adding a new section to provide for rules, regulations, and operating conditions that will enable the City to exercise the statutory exemptions from liability that the state promulgated. Without adding the Skate Board Park provisions to the Municipal Code a sublease cannot be executed.

KEY ISSUES AND IMPACTS

Skate boarding has become one of the fastest growing youth participant activities in the past decade. There are presently no facilities available in the City of Oakland to provide for this recreational sport. The creation of this skate board park will enable participants to engage in the sport under rules and regulations that will enhance the safety of the sport with the participants. The impacts will be of beneficial nature, in that this skate board park should help reduce the number of skate boarders that now practice this sport activity in public areas such as sidewalks, public parks, and on other private property and bring them to a safer, more controlled environment.

PROJECT DESCRIPTION

The skate board park will be built on 10,000 square feet of land under State Highway 580 at the end of Louise Street, Oakland, near the Emeryville City line. The design and construction documents prepared by Border Town Skate Park Inc. will be reviewed and approved by Caltrans. Entry to the facility will be by locking gate and activities will be permitted with restricted hours and conditions. Border Town's skate park and operations are private and are not governmental services or functions.

ENVIRONMENTAL IMPACTS

This action has been found to be categorically exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) under Article 19: Section 15301, of the CEQA Guidelines (Existing Facilities).

SUSTAINABLE OPPORTUNITIES

Economic: Sublease of this parcel by the Border Town Skate Park Inc. contributes to a community group's efforts to provide recreational opportunities to the City's youth. The project will establish a resource that provides quality of life benefits for local and regional residents.

Environmental: The project will have no significant impact on water quality, wildlife habitat if any, will be protected.

Social Equity: The project will provide an open space resource that can be accessed freely by the public. A well regulated skate board park will improve the social connections between the neighborhoods and local youths.

DISABILITY AND SENIOR CITIZEN ACCESS

The skate board park will be available for use by the disabled or senior citizens who are able to participate in skate boarding or related activities permitted under the amended Municipal Code.

RECOMMENDATION AND RATIONALE

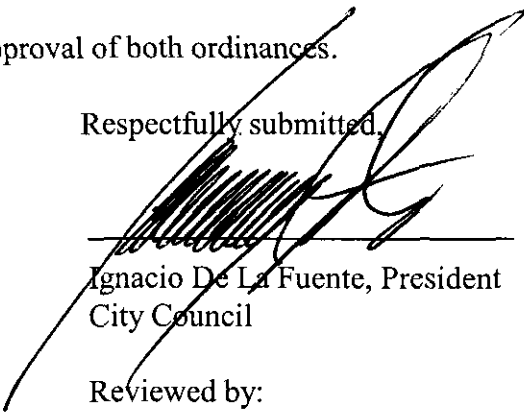
Staff recommends that the Sublease and the Ordinance to amend the Municipal Code be approved by the City Council. The Sublease agreement is subject to passage of the Ordinance adding provisions for Skate Board Parks to the Municipal Code. Those provisions are a prerequisite to exempting the City from liability under state statute.

Item #: _____
CEDA Committee
November 8, 2005

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends the City Council approval of both ordinances.

Respectfully submitted,



Ignacio De La Fuente, President
City Council

Reviewed by:
Frank Fanelli, Manager
CEDA - Real Estate Services Division

Prepared by:
Ron Basarich, Real Estate Agent
CEDA - Real Estate Services Division

Carlos Plazola
Councilmember's Assistant

**APPROVED AND FORWARDED
TO THE CITY COUNCIL**

OFFICE OF THE CITY ADMINISTRATOR

Item #: _____
CEDA Committee
November 8, 2005

NOTICE AND DIGEST

**AN ORDINANCE ADDING TO
CHAPTER 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS
LICENSES AND REGULATIONS, NEW SECTIONS 5.90.010 THROUGH
5.90.040 (OR OTHER APPROPRIATE SECTION NUMBERING) RELATING TO
REGULATION OF SKATE PARK FACILITIES**

**ORDINANCE AUTHORIZING A SUBLEASE AGREEMENT WITH BORDER
TOWN SKATE PARK INC., FOR THE SOLE AND EXCLUSIVE PURPOSE OF
OPERATING A SKATE BOARD PARK LOCATED UNDER STATE HIGHWAY
580 AT THE NORTH WESTERN END OF LOUISE STREET, OAKLAND, FOR
\$100.00 FOR THE TERM OF THE LEASE, PLUS PROVISION OF REGULAR
LITTER CLEANUP SERVICES FOR THE STATE DEPARTMENT OF
TRANSPORTATION FOR A TERM OF THIRTY (30) MONTHS, WITH AN
OPTION FOR ONE THIRTY (30) MONTH EXTENSION**

Two Ordinances have been introduced; the first Ordinance amends the Oakland Municipal Code to establish regulations for the use of skateboard parks.

The Second Ordinance authorizes a City sublease of land to non-profit Border Town Skate Park Inc. for construction, maintenance and operation of a skate board park.

OAKLAND CITY COUNCIL

05 OCT 24 PM 12:48

Approved as to Form and Legality

Oakland City Attorney's Office

Introduced by Councilmember De La Fuente

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

AN ORDINANCE ADDING TO CHAPTER 5 OF THE OAKLAND MUNICIPAL CODE, ENTITLED BUSINESS LICENSES AND REGULATIONS, NEW SECTIONS 5.90.010 THROUGH 5.90.040 (OR OTHER APPROPRIATE SECTION NUMBERING) RELATING TO REGULATION OF SKATE PARK FACILITIES

WHEREAS, the City Council of the City of Oakland desires to enhance and promote recreational opportunities in the City for the City's youth; and

WHEREAS, youth in the City have expressed a desire to have recreational skateboard parks for their use and enjoyment; and

WHEREAS, the City Council desires that facilities for skateboarding be provided within the City of Oakland and is establishing rules and regulations to enhance the public safety and promote safe skate boarding practices; and

WHEREAS, the City Council of Oakland desires to establish these rules and regulations for the use of Skate Board Parks and Facilities in the City of Oakland that are City owned, City controlled, or leased by City to and operated by other entities; **now therefore**

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

SECTION 1. The City Council finds and determines that the following is hereby added to the Oakland City Municipal Code, Title 5 sections 5.90.010 through 5.90.040 to read as follows:

TITLE 5, CHAPTER 5.90, BUSINESS LICENSES AND REGULATIONS

Sec. 5.90.010. Definitions

For purposes of this Chapter, certain terms and words are defined as follows:

- a. *Activities Area*: "Activities Area" shall refer to the portion of a Skate Park reserved for the use of skateboards, in-line skates, roller skates and scooters;

- b. *Audio Equipment*: “Audio Equipment” shall refer to any radio, compact disc player, tape player, walkman, megaphone, or any other audio device utilized to transmit or amplify sound;
- c. *Bicycle*: “Bicycle” shall refer to any two or three-wheeled bicycles, including BMX bicycles;
- d. *Director*: “Director” shall refer to either the Director of Public Works or the Director of Life Enrichment Agency-Office of Parks and Recreation (Parks), or his or her designees, agents or representatives;
- e. *Protective gear*: “Protective gear” shall include helmets, elbow pads, and kneepads;
- f. *Scooter*: “Scooter” shall refer to manually propelled, non-motorized, two-wheeled scooters;
- g. *Skate Park or Skate Board Park*: “Skate Park” shall refer to any property or facility owned operated, maintained, provided or controlled by the City, or any City-controlled property or facility leased or subleased to private entities for use solely for skate boarding and skating purposes;
- h. *Spectator Area*: “Spectator Area” shall refer to the portion of the Skate Park reserved for use by persons viewing the Activities Area;
- i. *Sports Equipment*: “Sports Equipment” shall refer to equipment utilized for athletic and/or recreational purposes, including but not limited to bicycles, mopeds, motorized cycles, skateboards, in-line skates, roller skates, shoe skates, scooters (both motorized and manually propelled), luge skates, ramps, jumps and similar objects utilized for athletic stunts or tricks, footballs, baseballs, basketballs, soccer balls, and Frisbees.

Sec. 5.90.020. Hours of Operation

The hours of operation for the Skate Park shall be from 8 a.m. to official Sunset daily, with the exception of posted hours for maintenance. The Director may shorten or extend the Skate Park hours when necessary to accommodate or regulate any permitted activity.

Sec. 5.90.030. Use Regulations/Prohibited Activities.

- a. No sports equipment of any nature shall be used in the Spectator Area of the Skate Park;
- b. Only skateboards, in-line skates, roller skates, and non-motorized scooters are permitted in the Activities Area of the Skate Park. The use of other sports equipment, including bicycles and motor-driven sports equipment, is expressly prohibited anywhere within the Activities Area;

- c. Pursuant to the provisions of this chapter, and in conformity to California Health and Safety Code Section 115800, all persons using or riding a skateboard, in-line skates, roller skates or scooters at the Skate Park shall be required to wear protective gear, which includes wearing elbow pads, kneepads, and a helmet that meets the standards of either the American Society for Testing and Materials (ASTM) or the United States Consumer Product Safety Commission (CPSC), or standards established by these entities subsequent to the adoption of this section. All protective gear and equipment shall be in good repair at all times during use;
- d. No portion of the Skate Park shall be modified, altered, or added to in any manner without the permission of the Director;
- e. No person under the age of twelve (12) years old shall be permitted to utilize the Activities Area of the Skate Park unless accompanied by an adult;
- f. No audio equipment or amplified sound equipment may be used or brought within the Activities Area or Spectator Area of the Skate Park, absent written approval from the Director. Audio equipment that is equipped and relies solely on earphones for sound amplification may be used or played in the Spectator Area of the Skate Park;
- g. No glass bottles or any other breakable glass items, food or beverages shall be permitted within the Activities Area or Spectator Area of the Skate Park;
- h. No drugs, alcohol, smoking or tobacco products shall be permitted or consumed in any portion of the Skate Park;
- i. No knives, guns, air guns or weapons of any nature shall be permitted in any portion of the Skate Park;
- j. No pets or other animals shall be permitted at the Skate Park;
- k. No use of the Skate Park or its amenities may be used when their surfaces are wet or other conditions exist that would adversely affect the safety of skateboarders or skaters;
- l. The Director shall post visible signs at each Skate Park, providing rules for use of the Skate Park consistent with this Ordinance. The Director is also authorized to post additional rules as necessary for operation of the Skate Park, the violation of which shall be punishable pursuant to Title 5, Sec. 5.90.040;
- m. Any person who fails or refuses to comply with the provisions of this Section and who is injured while using the Skate Park shall be deemed negligent.

Sec. 5.90.040. Violation as Infractions.

- a. Any violation of this Chapter is punishable as an infraction, including but not limited to the failure to wear protective gear. Violation of this Chapter is punishable by 1) a fine of not more than \$100.00 for the first violation, 2) a fine of not more than \$200.00 for a second violation within a period of one-year, and 3) a fine of not more than \$500.00, for a third violation within a one-year period. Any violation beyond the third within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine on not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months or by both.
- b. Any person cited for three or more infractions of this Chapter during a one (1) year period may be permanently barred from the use of, or entrance into, a City Skate Park facility, at the Director's discretion.
- c. Citations for violations may be issued by the City Administrator, the Skate Park Director or any Oakland City Department Director.

SECTION 2. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care toward persons or property within the city or outside the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 3. The City Council finds that pursuant to Title 14 of the Code of Regulations, Section 15061(b)(3), this ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") because this is not a project that has the potential for causing significant effect on the environment. The Council therefore directs the City Administrator to file a Notice of Exemption.

SECTION 4. The City Administrator, or her designee, is hereby authorized to take any and all actions necessary to cause the City Clerk to amend the Oakland Municipal Code consistent with this ordinance.

SECTION 5. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be effective without the invalid provision or application, and to this end the provisions of this ordinance are severable. The City council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

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, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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

05 OCT 24 PM 12:43

Approved as to Form and Legality
Davis

Introduced by Councilmember _____
Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

ORDINANCE AUTHORIZING A SUBLEASE AGREEMENT WITH BORDER TOWN SKATE PARK INC., FOR THE SOLE AND EXCLUSIVE PURPOSE OF OPERATING A SKATE BOARD PARK LOCATED UNDER STATE HIGHWAY 580 AT THE NORTH WESTERN END OF LOUISE STREET, OAKLAND, FOR \$100.00 FOR THE TERM OF THE LEASE, PLUS PROVISION OF REGULAR LITTER CLEANUP SERVICES FOR THE STATE DEPARTMENT OF TRANSPORTATION FOR A TERM OF THIRTY (30) MONTHS, WITH AN OPTION FOR ONE THIRTY (30) MONTH EXTENSION

WHEREAS, the City of Oakland (the "City") desires to enhance and promote recreational opportunities in the City for the City's youth; and

WHEREAS, the State of California, Department of Transportation, ("Caltrans") agreed to lease space under Highway 580 to the City solely for the construction and operation of a skateboard park for recreation and enjoyment of Oakland youth; and

WHEREAS, the City has entered into an Airspace Rental Agreement, a 30-month lease with one 30-month lease renewal option , with Caltrans (the "Master Lease") for a parcel of land of approximately 10,000 square feet, below State Highway 580 at the foot of Louise Street, and shown on Exhibit "A" attached hereto (the"Property"); and

WHEREAS, the City of Oakland desires to sublease the entire Property described above to Border Town Skate Park Inc., a California not for profit corporation, ("Sub-Lessee") for the sole purpose of constructing and operating a skate board park in Oakland; and

WHEREAS, the Sublease is subject to and subordinate in all respects to the Master Lease and all of its terms, covenants, conditions and provisions; and

WHEREAS, Sub-Lessee, as a further condition of the Sublease, agrees that it shall be solely responsible for all costs and liabilities, with no recourse to City for all of City's obligations under the Master Lease and also for the additional obligations imposed on Sub-Lessee under the Sublease, but not limited thereto; and

WHEREAS, the Sub-Lessee shall assume all economic and financial risks and obligations of the City under the Sublease, so that City shall have no substantial fiscal impacts resulting from the Master Lease or the sublease; and

WHEREAS, the Property is being subleased to Sub-Lessee in an “AS-IS” condition and City makes no representations of any kind with respect to the Property; and

WHEREAS, the Property is a City real property interest that is not surplus property under Ordinance No. 10142 C.M. S. and may be subleased without competitive bidding when such sublease is in the best interest of the City; and

WHEREAS, the City may recognize and value in-kind services and approve provision of such in-kind services in lieu of fair market rent pursuant to Ordinance No. 11722 C.M.S. when such in-kind services are provided directly to City, or through City to another entity; and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore

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

SECTION 1. The City Council hereby finds and determines that the Property is not surplus property, is not needed for City use, and may be subleased only for use as a skate board park, pursuant to terms of the Master Lease.

SECTION 2. The City Council hereby finds and determines that it is in the best interest of the City to sublease the Property to Sub-Lessee because Caltrans leased the Property to City solely for use as a skate board park after Sub-Lessee began construction of a skateboard structure on the Property without necessary permission, later requested that the City pursue lease negotiations with Caltrans, and now desires to construct a skateboard structure and operate and maintain a skate board park under an approved sub-lease.

SECTION 3. The City Administrator, or her designee, is authorized to execute a Sublease with Border Town Skate Park, Inc., which shall assume all economic and financial risk and obligations of the City contained in the Master Lease, plus any additional financial risks and obligations contained within the Sublease.

SECTION 4. The City Council authorizes Sub-lessee to provide services in lieu of rent directly to Caltrans and accepts Caltrans’ valuation of the services to be provided in lieu of rent as worth at least \$250 per month, the fair market monthly rental value. Caltrans shall have recourse only to Sub-Lessee in the event Sub-Lessee fails to perform required services.

SECTION 5. The services and functions of Sub-Lessee on the Property, or pursuant to the Sublease, are not governmental services or functions.

SECTION 6. The City Council has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because the project is exempt from CEQA pursuant to section 15301 (existing

facilities) and section 15061(b)(3) (general rule) of the CEQA Guidelines. The City Administrator is hereby directed to file a Notice of Exemption.

SECTION 7. The City Administrator, or her designee, is hereby authorized to take any and all actions necessary, consistent with this ordinance, to complete, implement, monitor, and amend this Sublease for the real property interest.

SECTION 8 The Sublease shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 9. 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, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

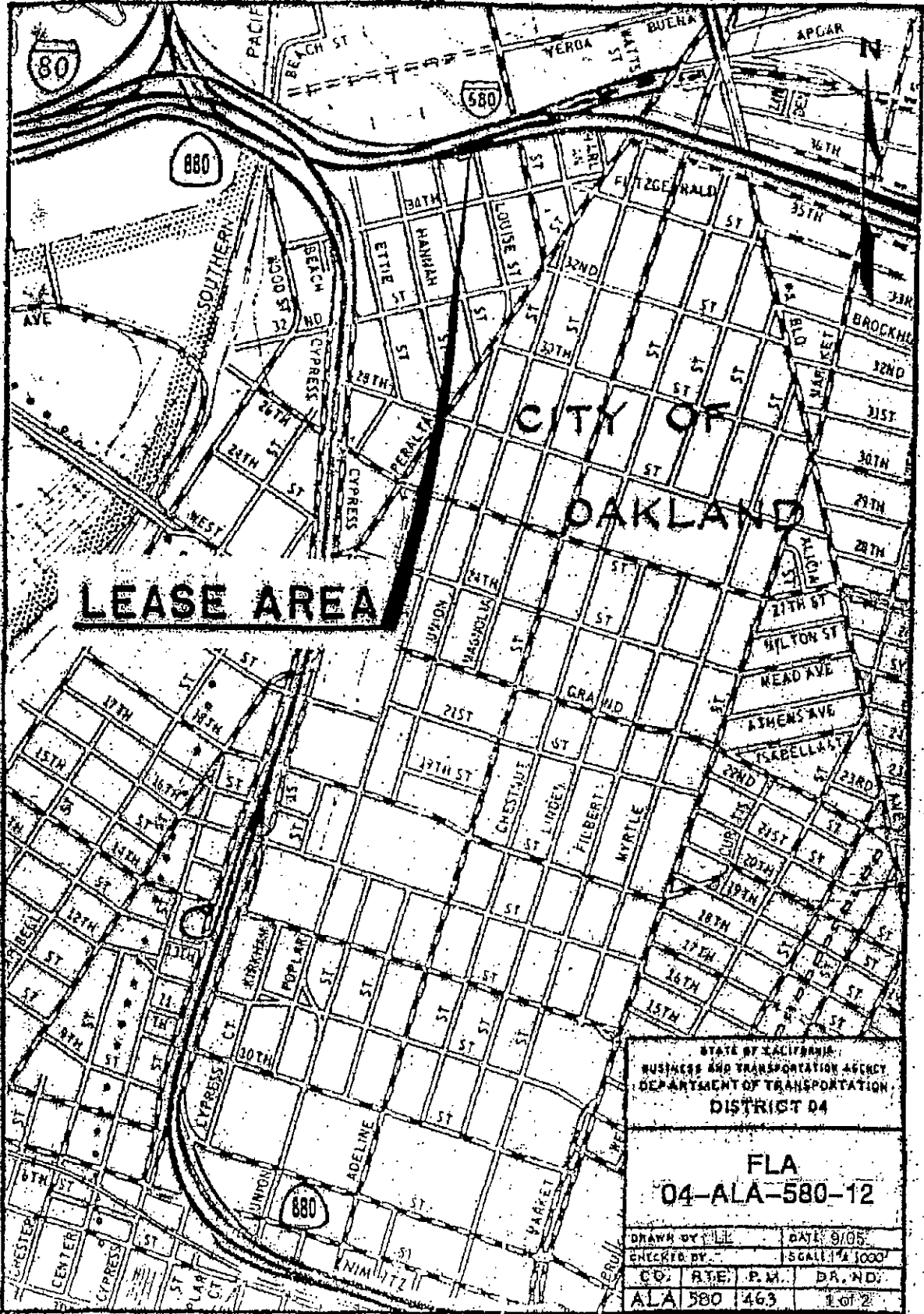
NOES -

ABSENT -

ABSTENTION -

ATTEST:

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



STATE OF CALIFORNIA
 BUSINESS AND TRANSPORTATION AGENCY
 DEPARTMENT OF TRANSPORTATION
 DISTRICT 04

FLA
04-ALA-580-12

DRAWN BY: LLL	DATE: 9/05
CHECKED BY: ...	SCALE: 1" = 1000'
CO: RME, P.M.	DR. NO:
ALA 580 463	1 of 2

R-410

