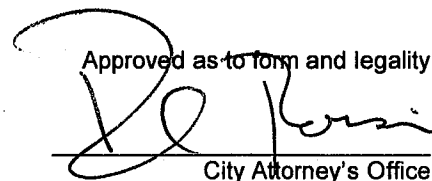


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REVISED, CED COMMITTEE, 12/2/2014; CITY COUNCIL, 12/9/2015

Approved as to form and legality



City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE UPDATING AND REVISING THE CITY'S REAL PROPERTY ACQUISITION AND DISPOSITION LAWS, AND CODIFYING SUCH LAWS INTO THE OAKLAND MUNICIPAL CODE

WHEREAS, as a home rule charter city, the City has the 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, the City Council has adopted various ordinances and resolutions governing the acquisition and disposition of real property; and

WHEREAS, the City Council wishes to update and revise these ordinances and resolutions as needed, adopt them as uniform rules and procedures, and codify them into the Oakland Municipal Code to make them accessible to the public; now, therefore,

The Council of the City of Oakland does ordain as follows:

SECTION 1. Ordinance Nos. 2575 (grant of public utility franchises), 10142 (sale of non-surplus property), 11602 (sale of surplus property), 11603 (rental and lease of City property), 11722 (rental and lease of City property for in-kind services), 11836 (acquisition of property interests less than \$5,000), 11945 and 12303 (disposition of property for telecommunications facilities), 12079 and 13147 (lease of City Administration Building Complex), 12195 (parking licenses), 12456 (Head Start leases), and 13185 (disposition of City property for development) C.M.S., and

Resolution No. 61788 C.M.S. (right of way certifications for federally-funded projects) are hereby repealed and replaced with this Ordinance and the Oakland Municipal Code provisions adopted under this Ordinance.

SECTION 2. Chapter 2.41 of the Oakland Municipal Code, added by Ordinance No. 13185 C.M.S., entitled "Disposition of City-owned Property for Development", is hereby repealed and replaced with the following new Chapter 2.41:

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 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.

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 for the real property does not exceed \$100,000. 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.

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."

2.41.040 Acquisition of real property by eminent domain.

The City has the right and power to acquire real property 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 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.

2.41.050 Lease of real property by City.

The 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 \$100,000 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.

2.41.060 Acquisition of easements.

The City is authorized to acquire easements, equitable servitudes, and right-of-way interests in real property by grant, purchase, gift, devise, 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 for such interest does not exceed \$100,000. 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.

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 projects have been acquired and that the projects have qualified for the receipt of federal funds.

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.

2.41.090 Implementation.

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

SECTION 3. Chapter 2.42 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 2.42

DISPOSITION OF REAL PROPERTY BY CITY

Article 1

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).

“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.

“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.

“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, 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 other 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 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 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 other 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 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.

2.42.020 Implementation.

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

Article II

Sale of City-Owned Real Property, Generally

2.42.030 Applicability.

This Article shall apply to all sales of real property by the City, except for the sale of real property for development. The sale of real property for development shall be governed solely by Article IV below.

2.42.040 Compliance with state laws.

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 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 90 days to negotiate for the purchase or lease of the property for the development of affordable housing.

2.42.050 Process for selling City real property.

A. Competitive process. No real property shall be sold by the City except 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, 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 the power of eminent domain;
2. The real property is undeveloped and less than 5,000 square feet in land area;
3. The real property has a fair market value of \$100,000 or less;
4. The City Council has made a finding and determination that calling for bids or offers on a competitive basis 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.

D. Administrative authority. Notwithstanding the above, 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;

2. The real property has a fair market value of \$50,000 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 delegated the authority to sell the real property to the administrative staff of the respective agency 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.

2.42.060 Sale price.

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

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, Director of Public Works, 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.

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;
2. The easement area is less than 5,000 square feet;
3. The easement has a fair market value of \$100,000 or less; or
4. 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.

Any grant of easement must be in exchange for a price, payable in cash or other 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, or (2) a state or federal government agency requires the grant of easement for less than fair market value.

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 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.

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 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 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;
2. The lease is for real property that is undeveloped and less than 5,000 square feet in land area;
3. The lease is for less than 2,000 square feet of leasable space;
4. The real property was formerly owned by the Redevelopment Agency or ORSA, and the Redevelopment Agency or ORSA governing body delegated the authority to lease the real property to the administrative staff of the respective agency by resolution; or
5. The lease is for a term of one 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 year or less that includes an option on the part of the City to extend the lease term past one year, or an agreement or exercise of option to extend a lease term past one 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 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. No further City Council action is required for such leases.

2.42.110 Rent.

Real property must be leased for a rent or fee, payable in cash or other 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.

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, Director of Public Works, 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.

2.42.130 Limitations on lease term.

Per Section 1001 of the Charter, no lease of City real property may be for a term greater than 66 years.

Article IV

Sale or Lease of City-Owned Real Property for Development

2.42.140 Intent and application.

This article is intended to facilitate the City's sale, lease, or disposition of real property for development to promote the economic development, housing, environmental, and community development goals of the City under the procedures set forth in this 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.

2.42.150 Authority.

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.

2.42.160 Compliance with State laws, if applicable.

The City shall comply with the Surplus Lands Act (California Government Code Sections 54220, et seq.) if and to the extent applicable to the disposition of

the property. Should the property be intended for development as affordable housing, the City shall also comply with California Government Code Sections 37362, et seq., if and to the extent applicable.

2.42.170 Process for disposition of property for development.

A. The 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.

B. Notwithstanding the above, the City Administrator may elect to waive the competitive NODO process and negotiate a disposition transaction with a selected developer, if the City Administrator determines that (1) disposition through a competitive NODO process is impractical, or (2) disposition through a process other than a competitive NODO process is otherwise in the best interests of the City. The City Administrator must explain the basis for any such waiver when he or she presents the proposed disposition to the City Council, and the City Council shall make findings in support of any waiver of the NODO process as a condition to approving any transaction.

C. In evaluating development proposals for 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.
3. The compatibility of the proposed development and use with the character of the surrounding neighborhood.
4. The experience, capacity and financial resources of the proposed developer.
5. The quality of project design.
6. The environmental sustainability of the proposed development.
7. Community and public objectives achieved by the proposed development, such as creating jobs, expanding the tax base, providing other fiscal benefits, providing needed commercial or social services, providing or improving needed

infrastructure, increasing, improving or preserving the stock of housing affordable to low and moderate income households, eliminating physical or economic blight, and contributing to the economic vitality of the neighborhood.

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

D. Following his or her evaluation of development proposals, the City Administrator shall make his or her recommendations as to the proposed development and the terms and conditions of the proposed development to the City Council. The City Council may evaluate the City Administrator's recommended development proposal and any other proposals based on the considerations set forth above.

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

2.42.180 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 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.

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. 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.

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;
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 years with two 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 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.

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 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.

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 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.

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 \$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 \$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 \$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 \$25.00 per square foot.
6. Minimum lease term shall be three 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.

SECTION 4. Chapter 2.43 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 2.43

GRANT OF PUBLIC UTILITY FRANCHISES

2.43.010 Public utility franchises.

No person, firm or corporation shall exercise any franchise permit or privilege mentioned in this chapter, except insofar as he or it may be entitled to do so by direct authority of the Constitution of the State of California or the

Constitution or laws of the United States, in, upon, over, under or along any public place in the City of Oakland, unless he, she or it shall have obtained a grant therefor in accordance with the provisions of this chapter and of the applicable provisions of the Charter. Nothing in this chapter shall be construed to invalidate any lawful franchise heretofore granted, nor to necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

2.43.020 Scope of chapter.

Except insofar as he, she or it may be entitled to do so by direct authority of the Constitution of California, or of the Constitution or laws of the United States, no person, firm or corporation shall exercise any privilege enumerated in this section unless he, she, or it shall have been granted an appropriate franchise therefor by the City of Oakland, namely:

- (1) Construct, maintain or operate a street, interurban, underground, or elevated steam or commercial railroad, or other system for transporting or conveying passengers or freight (including any appurtenances which are a part of the system) over a fixed route, along, upon, over, in, under or across any public place in the City of Oakland.
- (2) Construct, maintain or operate pipes, tubes or conduits along, upon, over, in, under or across any public place in the City of Oakland for the purpose of transmitting or distributing water, gas, steam, oil, air or other substance or utility.
- (3) Erect, construct, lay, maintain or operate poles, pipes, conduits, wires, cables, or appurtenances, upon, over, under, in, across or along any public place in the City of Oakland for the purpose of transmitting or distributing, power, heat, electricity or electric energy, or for communication by telephone, telegraph, or other system.
- (4) Construct, maintain or operate any other plants or systems necessary or convenient for furnishing the City and its inhabitants with transportation, communication, water, light, power or other public utility service, upon, over, in, across, or along any public place in the City of Oakland.

The term "public place" as used in this chapter shall be deemed to include any street, lane, alley, court or other public place in the City.

Nothing in this chapter shall be construed to require motor, contract or other carriers of freight or passengers not operating over a fixed route to obtain franchises for use of any public place of the City.

Nor shall anything in this chapter be construed to invalidate any lawful franchise heretofore granted, nor necessitate the obtaining of a new franchise for a use for which a franchise holder shall have a valid unexpired franchise.

Notwithstanding the above, this chapter shall not apply to (1) leases or licenses of City public space, including without limitation telecommunications leases and licenses (said leases and licenses are governed by Chapter 2.42), (2) state video service franchises (said franchises are governed by Chapter 5.17), or (3) any franchise in which the City's authority to grant or regulate the franchise is preempted by state or federal law.

2.43.030 Grant of franchises.

Pursuant to its constitutional, charter and statutory authority, the Council of the City of Oakland may grant franchises and privileges for all of the purposes enumerated in Sections 2.43.010 and 2.43.020 of this chapter to persons, firms, and corporations, whether operating under any existing franchise or not, upon such terms and conditions as are in the applicable provisions of the Charter, of this chapter and of any supplementary ordinances provided, and may in such franchises impose such other and additional terms and conditions not in conflict with said Charter or ordinances, whether governmental or contractual in character, as in the judgment of said Council are in the public interest.

2.43.040 Consideration.

No franchise shall be granted without reserving to the City adequate consideration for the privilege conferred.

No franchise shall be deemed to grant the right to install public utility facilities in any public park or playground unless the franchise ordinance expressly so provides.

2.43.050 Application.

An applicant for any franchise above mentioned shall file with the Council a verified application which shall state: (a) the name of the applicant, (b) the purpose and term, whether definite or indeterminate, for which the franchise shall be desired, (c) the amounts and/or percentages, if any, applicant, if granted the franchise, will pay to the City during the life of such franchise, (d) any limitations as to time, place or type of services proposed by applicant, and (e) any other terms or conditions that applicant may desire, including surrender of existing franchises, or parts, thereof, or claims to such franchises, or proposals to settle any litigation or controversies between applicant and the City.

Franchise applications shall set forth such other information as the Council may require.

2.43.060 Fee.

Every application for a franchise, permit or privilege shall be accompanied by a cash deposit or not less than Five Hundred Dollars (\$500), or by a certified check for said amount, payable to the City Treasurer and certified by some responsible bank in the City of Oakland as a fund out of which to pay all expenses connected with such application. The deposit of the applicant shall be retained until the acceptance of the franchise and the filling of any bond or other security required or until the Council determines not to grant the franchise, whereupon the remainder, if any, of the \$500 after the payment therefrom of all expensed incurred by the City in connection with the advertising, engineering, clerical work and awarding of such franchise privilege or permit, shall be returned.

2.43.070 Bidding.

The City Council may grant a franchise by ordinance without taking bids or may, in its discretion, advertise for bids for the sale of a franchise after notice inviting bids therefore upon a basis, not in conflict with the provisions of the Charter, to be set out in advertisements for bids and notice of sale, provided that no bidding shall be had or required upon any renewal of a franchise, surrender of existing franchise or parts thereof, or in settlement of litigation between the grantee and the City.

2.43.080 Transportation franchises.

Every franchise granted a transportation company shall specify the area in which the grantee shall operate, the public places or routes to be followed by the tracks or vehicles of the grantee-which area, public places and routes shall be subject to the lawful orders of the Public Utilities Commission of the State of California.

The franchise may also provide for the changing of such routes or for alternate routes, provided such change or alternate routes shall be subject to the lawful orders of said Public Utilities Commission.

2.43.090 Bonds.

The Council may require the grantee of any franchise to provide such bond or other security as it deems the public interest requires.

2.43.100 City Administrator recommendations.

Every application made to the Council for a franchise, privilege or permit mentioned in this chapter shall before any action is taken thereon, be referred by the Council to the City Administrator and the City Attorney for their respective recommendations.

Before making his or her recommendation to the Council, the City Administrator shall obtain the recommendations of the Superintendent of Streets, the Planning Engineer and the Traffic Engineer.

If, in the judgment of the City Administrator, the franchise permit or privilege applied for should not be advertised for sale or granted, he or she shall so report stating the reasons therefor; and if, in his or her judgment, such franchise, permit or privilege should be granted, he or she shall recommend the terms and conditions upon which the same should be granted.

2.43.110 Resolution and notice.

Upon receipt of the City Administrator's recommendation, the Council may pass a resolution declaring its intention to grant the franchise, stating the character of the same setting forth a notice of the day, hour and place when and where any and all persons having any objection to the granting thereof may appear before the Council and be heard thereon, and directing the City Clerk to publish said notice in the official newspaper at least once within fifteen (15) days after the passage of said resolution. The time fixed for such hearing shall be not less than twenty (20) nor more than sixty (60) days after the date of the passage of said resolution.

Such notices shall state the name of the applicant, the character of the franchise, its term, whether definite or indeterminate, the amounts and or percentages, if any, grantee shall pay to the City during the life of such franchise, any limitations as to time, place or type of service proposed, the amount and character of any bond or other security required, together with an outline of the other major provisions of the proposed franchise.

2.43.120 Hearing.

At any time not later than the hour set for the hearing of objections, any person interested may make written protest stating objections against the granting of such franchise. Such protest must be signed by the protestant and be delivered to the City Clerk. At the time set for the hearing objections the Council shall proceed to hear and pass upon all protest so made and its decision shall be final and conclusive. The Council may adjourn said hearing from time to time.

If no protest in writing shall have been delivered to the Clerk up to the hour set for hearing, or such protests as shall have been filed shall have been heard and determined by the legislative body to be insufficient or shall have been overruled or denied, the Council may grant such franchise. Such franchise shall be granted by ordinance adopted in the manner prescribed by the Charter for the enactment of franchise ordinances.

2.43.130 Transfer.

No franchise, permit or privilege granted by the City shall be, in whole or in part, leased, assigned or otherwise disposed of, or transferred without the express consent of the City given by ordinance, and no deadlines with any one on the part of the City to require the performance of any act or payment or any compensation of any one shall be deemed to operate as such consent; provided that nothing herein shall be construed to prevent the grantee from the City of such franchise, permit or privilege from including it in a mortgage or trust deed without such express consent.

The grantee of any franchise granted pursuant hereto shall (a) construct, install and maintain all tracks, pipes, tubes, conduits, poles, wires, instrumentalities and appurtenances in accordance and in conformity with all of the lawful ordinances, rules and regulations theretofore or thereafter adopted by said Council in the exercise of its police powers and as to State Highways subject to the provisions of general laws relating to the location and maintenance of such facilities therein, (b) pay to the City on demand the cost of all repairs to public property made necessary by any operations of the grantee under such franchise, (c) indemnify and hold harmless the City and its officers and employees from any and all liability for damages proximately resulting from any operations under such franchise, and (d) make such reports and permit such examination of its records as the franchise may require.

Nothing in this chapter shall be construed as prohibiting the Council from including in any ordinance granting any franchise, permit, or privilege such other conditions or requirements not inconsistent with the provisions of the Charter as the Council may desire to have so inserted.

2.43.140 Acceptance.

The grantee of any franchise granted under this chapter shall within ten (10) days after the franchise is granted, file with the City Clerk a written acceptance of the terms and conditions thereof and any bond or other security required by the Council.

2.43.150 Emergency franchises.

When the Council shall find that an emergency exists and that public convenience and necessity require it, a special permit may be granted to an applicant for a franchise under this chapter to permit such applicant to proceed with the relocation, extension, alteration or other change in existing facilities, except repairs or maintenance changes, which relocation, extension, alteration or other change in existing facilities by reason of such emergency should be made before the securing of a franchise under this chapter is possible.

Such special permits shall only be granted to an applicant for a franchise under this chapter, and after the filing of the application for a franchise as in this chapter provided.

An application for a special permit shall be filed in writing with the Council setting forth such information as will permit action thereon. Reference in said application may be made to the application for a franchise for a description of the proposed extension, alteration or other change in existing facilities.

All such special permits shall be granted under the express condition that if a franchise under this chapter is not granted and accepted, all work done under such special permit shall be removed immediately at applicant's expense and the streets or alleys or other public places affected by such work shall be placed in as good condition as before such work was done, all to the satisfaction of the Superintendent of Streets.

The Council may require, as a condition to the granting of such special permits, that a bond of a kind and in an amount determined by it shall be furnished by applicant conditioned upon the faithful performance of the terms and conditions of the permit and further conditioned that applicant shall prosecute diligently to completion all work thereunder including removal work as hereinbefore provided.

Applications for permits under this section shall be referred to the City Attorney and the City Administrator in the manner provided in Section 2.43.100 hereof.

SECTION 5. The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid, such holding shall not impair or invalidate the remainder of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included.

SECTION 6. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

Dr

**AN ORDINANCE UPDATING AND REVISING THE CITY'S REAL
PROPERTY ACQUISITION AND DISPOSITION LAWS, AND
CODIFYING SUCH LAWS INTO THE OAKLAND MUNICIPAL CODE**

NOTICE AND DIGEST

This Ordinance adds Chapter 2.41 to the Oakland Municipal Code updating, revising, and codifying existing City ordinances governing the acquisition of real property by the City by purchase or lease, Chapter 2.42 updating, revising, and codifying existing City ordinances governing the disposition of real property by the City by sale or lease, and Chapter 2.43, updating, revising and codifying the City's ordinance governing the grant of public utility franchises by the City.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

14 DEC 10 PM 12:33