



# POLICY AND PROCEDURE

<b>Subject:</b> Property Management Policies and Procedures for Lease and Sale of City-owned Property.	<b>Index:</b> Real Property Management <b>Number:</b> 901-1
<b>Effective Date:</b> July 1, 1994	<b>Prepared By:</b> Economic Development
<b>Supersedes:</b> Not applicable.	<b>Approved By:</b> <i>D. Scott Shull</i>

- 1.0 **PURPOSE:** The purpose of these policies and procedures is to establish guidelines for the identification and/or timely review of City-owned property which is unused or marginally used and the designating of such property as surplus to the City's needs; to provide guidelines for the disposition of such property through competitive sealed bid, negotiated sale or exchange; and to establish guidelines for the leasing of City-owned property.
- 2.0 **ORGANIZATIONS AFFECTED:** All Departments/Divisions.
- 3.0 **REFERENCES:** Government Code Section 54220 et seq.
- 4.0 **POLICY:**
  - 4.1 In conformance with the Government Code and the General Plan, it is the policy of the City to manage its real estate assets so that municipal needs which rely on these assets may be properly implemented. The City Council has the authority to review all City-owned real estate not required for municipal purposes and will determine the appropriate disposition for such property. Those properties needed for municipal purposes will be so designated by the City Council. If a property is not needed for public use within the foreseeable future, it may be made available for lease or sale. If a property may be needed at a future time, it may be made available for interim lease. Those properties not required for municipal use or designated for lease may be declared surplus by the City Council and sold.
  - 4.2 It is the policy of the City to optimize the financial return on sale or lease from City-owned property based upon specific requirements, including 1) an appraisal of the property which is no more than six months old at the time the recommended transaction is presented to the City Council; 2) a review of prevailing economic conditions and recent applicable trends; and 3) a determination of any special benefits that may accrue from sale, lease or exchange.

4.3 It is the policy of the City that property sale or lease transactions will not be negotiated in open session and, accordingly, the City Council will either approve, disapprove or return to the City Manager for further negotiation or study, any recommendation concerning the disposition of City property.

4.4 Responsibility and authority for implementation and administration of the City's property management policies and procedures shall vest with the City Manager.

5.0 **PROCEDURE:**

5.1 **Real Estate Review** - All unused and marginally used City-owned property will be reviewed bi-annually to determine public facility or service needs and General Plan Element support needs. The following procedures shall apply:

5.1.1 **Department/Agency Review** - Appropriate City departments and other governmental agencies will be requested to review and recommend.

5.1.2 **Planning Commission Review** - The City Planning Commission will review for consistency with the General Plan.

5.1.3 **Other Boards and Commissions** - Appropriate boards and commissions may provide recommendations.

5.1.4 **City Manager's Recommendation** - Based upon the comments and recommendations received from the Planning Commission, other boards and commissions, other agencies and City staff, the City Manager will recommend property disposition designations to the City Council.

5.1.5 **City Council Designation** - The City Council will determine the designation to be applied to the property, i.e., declare it surplus and authorize sale or authorize the property to be leased.

5.2 **Designation Criteria** - City-owned property not required for municipal purposes will be designated for sale or lease utilizing the criteria listed below. At the time the City Manager recommends whether property should be sold or leased, the City Council shall be provided with an appropriate analysis of the alternatives.

**Criteria for Sale:**

5.2.1 **Needed Revenue Source** - The sale of property may provide revenues necessary for public facilities or other qualified purposes which are unfundable through other revenue sources.

5.2.2 **Location of Property** - Based upon location, access, topography and other considerations, the only viable alternative is to sell the property.

- 5.2.3 **Liability** - Elimination of liability associated with location and/or condition of property.
- 5.2.4 **Economic Development Initiatives** - The sale will enhance the City's position relative to its economic development planning and program efforts.
- 5.2.5 **Maximize Financial Return** - The sale will maximize the total economic return to the City.

**Criteria for Lease:**

- 5.2.6 **Legal Restraints** - The property can only be leased because of legal restrictions, such as tideland grants, dedications and covenants, agricultural preserves, open space designations, watershed or floodplains.
- 5.2.7 **Probability of Future City Use** - The property may be required in the future for public facilities, other required municipal services or benefit.
- 5.2.8 **Historic Significance** - Certain City-owned property and structures may have historic significance and, by City Council determination, must remain in City/public ownership.
- 5.2.9 **Area Future Uncertain** - The property is located in an area of uncertain future development and can be leased on an interim basis until future public needs and/or land use designations can be determined.
- 5.2.10 **City Control Required** - The City requires substantial control over development, use and reuse of the property.
- 5.2.11 **High Demand - High Long-Term Return** - The property has an immediate potential for significant long-term economic returns because of high demand and type of use, e.g., commercial uses on water front properties.

**5.3 Sale of Real Estate - Competitive Bid**

- 5.3.1 **Competitive Sealed Bid** - Subject to provisions of Government Code Section 54220 et seq., City property authorized for sale by the City Council will be offered for competitive bid unless the property meets the criteria for negotiated sale as set forth in 5.4. All sales will be made to the highest bidder, subject to final confirmation by the City Council. The City Council reserves the right to reject any and all bids.

**5.3.2 Exception to Highest Bid** - Based upon other relevant factors and/or issues, the City Council is not bound to make its decision of sale based solely on the highest price offered. By example, the recommendation of sale may be predicated upon a particular development or land use which is considered more desirable than that of the highest bid.

**5.3.3 Minimum Acceptable Bid** - The minimum acceptable bid will be established prior to public notice after consideration of relevant market factors and other pertinent information. Subject to the approval of the City Council, the City may engage a qualified appraiser to prepare an Opinion Letter of Value to establish a range of reasonable market values and the minimum acceptable price.

**5.3.4 Notice of Sale** - Notice concerning the availability of property for sale will be publicized at least once in a newspaper of general circulation, printed, published and circulated in the City and by sending written notice to all persons who have expressed an interest in such property. **NOTE:** The Notice of Sale must be approved by the City Attorney before it is released to the newspaper. Applicable State laws may require specific noticing procedures to other public agencies prior to general noticing.

**5.3.5 Bid and Sale Deposits** - Sealed bids must be accompanied by a refundable deposit of one percent (1%) of the amount bid in the form of cash, or cashier's or certified check. The successful bidder must deliver, immediately following the declaration of sale, a deposit of five percent (5%) of the amount of the successful bid. The form of deposit will be cash, or cashier's or certified check. Failure to deliver this deposit to the City before the close of the next business day may be considered a withdrawal of the bid and the City may then offer the property to the next highest bidder. The deposit may be refundable subject to jointly executed escrow instructions and/or purchase agreement.

#### **5.4 Sale of Real Estate - Negotiated Sale**

**5.4.1 Adjoining Property Owner** - Upon the recommendation of the City Manager, the City Council can determine that the property being offered for sale can have real value only to a certain owner or owners of adjoining property. If such a determination is made, the City Manager (or designee) is authorized to enter into direct negotiation with the affected property owner(s).

**5.4.2 Public Agency Acquisition Proposals** - When other governmental, public and quasi-public agencies submit acquisition proposals, a sale may be consummated by negotiation. These agencies will include but not be limited to: the City's Redevelopment Agency, Federal, State, County and other municipal agencies, school districts, special districts and regulated utility companies. Further, through negotiation, the City is authorized to make transfers and

conveyances to other public and quasi-public agencies at less than fair market value.

- 5.4.3 **501 C-3 Organizations** - When qualified nonprofit organizations offer to purchase City-owned property, a negotiated sale may be consummated providing the organization has a development commitment to the project and has the required financing commitments to ensure project completion.
- 5.4.4 **No Acceptable Bids Received** - When a property has been offered through a competitive bid process and no acceptable bids are received, the City Council may authorize the City Manager to sell the property on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of the bid.
- 5.4.5 **Property Exchanges** - Real property exchanges may be consummated by direct negotiation provided that such exchanges will only be considered with other governmental/public agencies or when there is a decided advantage to the City.
- 5.4.6 **Entitlement and Due Diligence Contingencies** - Substantial unresolved issues concerning required planning and building approvals, as well as basic due diligence requirements, e.g., soils/geotech conditions and toxics clearance, may necessitate a negotiated sales process.
- 5.4.7 **City Council Approval Required** - In all instances where negotiated sales are required, prior approval of the City Council must be obtained and all sales will be subject to final City Council approval.

## 5.5 **Leasing of Real Estate**

- 5.5.1 **Rate of Return** - The City shall obtain a fair market rate of return on City-owned property being considered for lease and negotiate terms and conditions which will continue to sustain a fair rate of return through rent review, consumer price index adjustments, reappraisals or the application of percentage rents to gross income. The rate of return will be predicated upon the highest and best use of the property, or a reasonable return commensurate with the designated public use required by the City. In no event will the rate of return be the sole determining factor in the selection of a lessee.
- 5.5.2 **Rental Terms and Lease Terms** - Rental terms may be negotiated on the basis of fixed rates, percentages of gross income, net leases or combinations thereof, whichever is commensurate with the market place.
- 5.5.3 **Minimum Rent** - Subject to negotiation, percentage leases will provide a minimum base rent, which shall be adjusted at appropriate intervals, and within a range of every five to ten years, to reflect seventy-five percent (75%) of the average annual rent actually paid during the preceding interval. In no

event shall the adjusted minimum rent be less than the minimum rent in existence preceding the adjustment.

**5.5.4 Selection of Lessee - Leasehold proposals shall be evaluated essentially in terms of:**

5.5.4.1 Consideration offered in the form of rent.

5.5.4.2 Financial capability.

5.5.4.3 Expertise regarding the proposed leasehold development and demonstrated operating experience.

5.5.4.4 Nature of proposed development

5.5.4.5 Special public/City benefits to be derived (if any).

**5.5.5 Amendments -** Amendments of leases, including assignments and subleases, require City Council authorization. Whenever there is a substantial amendment, the City Manager shall provide an indication of the fair market return for the leasehold. This can be accomplished by appraisal, a survey of the market rate of return, a combination of the above, or any other relevant information.

**5.5.6 Financial Encumbrances -** The City will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee. On recommendation of the City Manager, the City Council may approve appropriate financial encumbrances of the leasehold interest which provide that all loan proceeds are used for authorized improvement of the premises. Loans or refinancing, in the form of encumbrances against the lease for the purpose of reducing equity or financing the sale of leasehold interest, will not be allowed until the property is fully developed; such financing may be permitted so long as there is also substantial benefit to be gained by the City.

When encumbrances are made against a leasehold for its development, City staff shall take appropriate steps to insure that the proceeds go into the leasehold. It is recognized that the steps will depend upon the circumstances of the case and limitations on staff resources.

- 5.5.7 **Improvement** - Lease improvements installed by the lessee will be removed at termination without cost to the City, or will revert to the City, at the City's option. Subject to required planning and building permit approvals, all leasehold improvements and alterations require prior approval by the City Council.
- 5.5.8 **Audits** - All percentage leases shall be subject to an accounting review in the first year of operation to establish proper reporting procedures and at least once every three years thereafter. More frequent reviews may be made if appropriate. The City shall reserve the right to review all other leases and agreements if determined warranted.
- 5.6 **Marketing** - Competitive offers for lease or sale shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as requests for proposals (RFPs), a marketing subscription system, direct advertising, exposure through the real estate media (such as the multiple listing service, posting the property and any other appropriate means.
- 5.7 **Real Estate Broker's Fee** - Subject to City Council approval, the City may pay a real estate brokerage fee for qualified representation of a selected lessee or purchaser of City property. When the amount of rental or purchase price offered are criteria for selecting a lessee or purchaser in competitive situations, the selection will be based on the highest net rental or net purchase price, taking into account any brokerage fees involved in the competition.

i:\policy\901-1