

CITY OF SAN DIEGO, CALIFORNIA  
COUNCIL POLICY

SUBJECT: DISPOSITION OF CITY-OWNED REAL PROPERTY  
POLICY NO.: 700-10  
EFFECTIVE DATE: TBD

BACKGROUND:

The City of San Diego is unique among municipalities statewide in the size and diversity of its real estate portfolio. This portfolio includes real estate assets ranging in size from large tracts of open space to small remnant parcels and includes facilities necessary to provide core government services, such as parks, police stations, fire stations, libraries, maintenance yards, and administrative space. Additionally, the City manages two municipal airports (Montgomery-Gibbs Executive Airport and Brown Field Municipal Airport), a major league baseball stadium, a sports arena, an 8,000-acre agricultural preserve, and nearly 60,000 acres of open space.

The demand for public services in the City will change with technological advances and mobility improvements to meet the City's needs in a variety of ways. As opportunities arise, the City could revisit whether continued City use of certain "*City properties*" (as defined below) is necessary and whether certain *City properties* may no longer meet customer demand or could serve a more beneficial purpose. In determining whether to dispose of any *City property*, the City must evaluate each property's future municipal use, current demand and condition, and statutory obligations, as well as its potential economic and operational benefit to the City and its residents.

Subject to limited exceptions, the Surplus Land Act (defined below as the "*SLA*") requires the City Council to declare that a *City property* is either surplus land or exempt surplus land as defined in the *SLA* before the City takes any action to dispose of the *City property*. The City must follow a prescribed *SLA* process for the disposition of surplus land. The City may dispose of exempt surplus land without following the standard *SLA* disposition process (e.g., without issuing a notice of availability to other public agencies and affordable housing sponsors).

DEFINITIONS:

"*Affordable housing*" means housing subject to long-term, recorded affordability restrictions ensuring that each restricted unit is occupied by an income-eligible individual or household at a restricted rent or price affordable to the occupant in compliance with applicable laws.

"*City property*" (or "*City properties*") means real property in which the City holds fee title ownership.

"*Clearance notification*" means a written notification provided by the *Department*, via email or hard copy, to City recipients as specified in Section IV.C of this policy, asking each recipient to review a *City property* that the *Department* believes can be declared *surplus land* or exempt surplus land as defined under the *SLA*.

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“*Consumer Price Index*” means the Consumer Price Index for All Urban Consumers (CPI-U) for Los Angeles-Long Beach-Anaheim, California, with a base year reflecting the average of 1982-1984, published by the U.S. Bureau of Labor Statistics, or if that index is no longer published, a similar index typically used in real property lease transactions as determined by the *Department*.

“*Department*” means the City’s department primarily responsible for overseeing the City’s real estate portfolio, municipal property assets, redevelopment successor entity properties, and airport management functions.

“*Flat rate lease*” means a lease of a *City property* requiring the lessee’s payment of rent on a fixed-rate basis, subject to any specified periodic rent adjustments.

“*Percentage lease*” means a lease of a *City property* requiring the lessee’s payment to the City of both: (a) established minimum rent (also known as base rent); and (b) rent based on specified percentages of categories of gross revenue derived by the lessee and any sublessees from all revenue-producing activities conducted on the leased *City property*.

“*Qualified appraiser*” means a real estate appraiser, who may be a professional appraiser or a City employee, who holds a valid real estate appraisal license or certification issued by the California Bureau of Real Estate Appraisers or any successor State of California agency or department performing the same or similar functions.

“*SLA*” means the California Surplus Land Act, Government Code sections 54220-54234, as amended from time to time, and as interpreted and enforced by the California Department of Housing and Community Development, including through the issuance of written regulations, guidelines, and technical assistance.

“*Surplus land*” means *City property* that is no longer needed for City use (i.e., is no longer needed for an “agency’s use” as defined in the *SLA*) and, therefore, is subject to the standard *SLA* disposition process.

“*Timely appraisal*” means a real estate appraisal completed by a *qualified appraiser* within 12 months before the date of City approval of the sale or lease of *City property* in reliance on the appraisal (i.e., the date on which the City Council authorizes the sale or lease, or if no City Council action is required, the effective date of the contract for the sale or lease).

**PURPOSE:**

The purpose of this policy is to establish protocols for the orderly administration of real property dispositions (including lease and sale) of all *City properties*. This policy is intended to be consistent with, and does not supersede, the requirements of the City Charter or the San Diego Municipal Code, including Chapter 2, Article 2, Division 9 (titled “Contracts – Leases – Sales”).

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This policy is intended to support and does not supersede any additional requirements to sell or lease certain real property interests under California Health and Safety Code section 33433 (related to disposition of certain *City properties* consisting of former redevelopment sites) and California Government Code section 52201 (related to disposition of *City properties* for an economic opportunity).

### POLICY:

It is the City's policy to manage each *City property* to fulfill the City's municipal needs or to fulfill post-redevelopment statutory obligations set forth in the City's Amended and Restated Long Range Property Management Plan and the City's Affordable Housing Master Plan.

The Mayor, through the *Department* or other designees, will review any *City property* not currently being used for, or no longer meeting, municipal purposes and determine the appropriate use of the *City property*. If a *City property* is not needed for any City use within the foreseeable future, the City may identify and designate the *City property* as available for sale or lease if the disposition will reduce City operational impacts or achieve a public purpose. The *Department* should prioritize the lease (rather than sale) of *City properties*.

In general, the City will balance the desire to optimize the sale price or leasehold rent with the public purpose that could be derived from disposition based on relevant factors, including: (1) a *timely appraisal* reflecting current market value (for a sale transaction) or current market rent (for a lease transaction); (2) prevailing economic conditions and market trends; and (3) any special benefit or value accruing to the City from the disposition. The City will not permit discounts from the current market value or market rent reflected in the *timely appraisal*, unless the City Council makes a finding that the disposition will serve one or more identified public purposes or provide one or more identified public benefits and unless the disposition complies with the requirements of any other applicable Council Policies.

When City Council approval of an item is required under this policy, the *Department* will follow procedural protocols established by the Council President and set forth in the Rules of Council (San Diego Municipal Code section 22.0101) on how to docket the item for the applicable Council Committee or direct docket the item for the full City Council. The *Department* will clearly identify the reasons for the proposed disposition in the written staff report.

### I. REAL PROPERTY MANAGEMENT PLAN.

The *Department* should review, update, and present to the City Council for proposed approval during a public meeting, a Real Property Management Plan every two years, contingent upon available budget resources. The purpose of the Real Property Management Plan is to enable City leadership, policy makers, and the public to have a better understanding of the City's real estate portfolio needs and how *City properties* can be best utilized to benefit long-term City operations and the residents and businesses in San Diego. The applicable Council Committee may request periodic reviews and updates of the Real Property Management Plan. The most current, City

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Council-approved version of the Real Property Management Plan should be available on the *Department's* website.

The Real Property Management Plan should include an inventory of all *City properties*, including properties occupied but not owned by the City, and a disposition plan for any *surplus land*, if identified. The major elements of the Real Property Management Plan should include:

- Summary of the location (e.g., address or assessor's parcel number), size (in acres or square feet), and current use of all *City properties* and all properties occupied but not owned by the City
- Strategies for management of all *City properties* and all properties occupied but not owned by the City, including a building-by-building and aggregate review detailing:
  - For each *City property* leased out by the City, as landlord
    - Identity of tenant (e.g., name and entity type), subject to any privacy rights of individual residents and subtenants, if any.
    - Current rent vs. most recent market rental value, including the date of valuation
    - Lease expiration date
    - Lease renewal options, if applicable
    - Primary use of the property
    - Name of asset-owning department
  - For each property occupied by the City's workforce, but not owned by the City
    - Current rent vs. most recent market rental value, including the date of valuation
    - Lease expiration date
    - Lease renewal options, if applicable
    - Primary use of the property and department occupying the space
- Disposition plan for *surplus land*
- Pending and proposed sales and leases should be noted

When revising and updating the Real Property Management Plan, the *Department* will solicit feedback from asset-owning departments on all *City properties* to determine which properties, if any, are no longer needed for City use.

## II. REVENUE FROM LEASE OR SALE OF CITY PROPERTY.

The City's use of revenue generated by the lease or sale of any *City property* will depend on how the City originally acquired the property.

- a. If the City leases *City property* acquired using General Fund monies, the City's lease revenues will be used for General Fund purposes except as otherwise provided in the City Charter or Municipal Code.

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- b. If the City sells *City property* acquired using General Fund monies, the City's sale proceeds will be used for the acquisition, construction, and replacement (but not the repair or maintenance) of permanent public improvements as required by City Charter section 77, except as otherwise approved by two-thirds of local voters.
- c. If the City sells or leases *City property* acquired using Enterprise Fund monies, the City's sale or lease proceeds will be subject to all use restrictions governing the applicable Enterprise Fund.

III. RETENTION OF REAL ESTATE BROKERS.

The City may retain a real estate broker to assist the City in the sale or leasing of any *City property*, such as by marketing the property to potential lessees and providing the City with relevant market data. In accordance with California Government Code section 1090, however, the broker must not be involved in the making of any City contract in which the broker has a financial interest. The City will select each broker for individual assignments through a request for proposals or a request for qualifications and a subsequent bid or other method that results in the City receiving the services of a qualified broker at the best value to the City. All brokerage participation and brokerage fees will comply with San Diego Municipal Code section 22.0905 (titled "Real Estate Broker's Registration and Fee") and California Government Code section 1090, and specifically will comply with the Code of Conduct in Council Policy 000-04, to assure that the broker's performance of services for the City will not violate any applicable laws or create any ethical breach or appearance of impropriety. No dual agency arrangement will be permitted. Whenever the *Department* asks the City Council to authorize the sale or lease of any *City property* for which the City has retained a broker, the *Department's* staff report to the City Council will disclose the compensation structure and the amount payable to the broker. The *Department* will confirm that any City-retained broker has completed and updated all required disclosures, including the filing of a Form 700 Statement of Economic Interests. In addition, before any contract for brokerage services is signed, the *Department* will confirm that the broker has submitted a completed paper Form 700 for *Department* review to ensure that the broker has no conflict of interest or appearance of impropriety with respect to the pertinent transaction.

IV. SALE OF CITY PROPERTY.

A. Criteria for Selling City Property

If the City is legally required to sell a *City property*, the City will make the property available for sale in compliance with applicable legal requirements. In addition, if a *City property* is not currently used by any City department, and if the *Department*

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determines (based on its own evaluation or any input from other City departments, City leadership, or City Council offices) that the property does not support a municipal function and does not have a foreseeable City use, the City may make the property available for sale when one or more of the following criteria are met:

1. The property is a non-performing or under-performing asset, and greater value to the City can be generated if the City sells the property rather than retaining it within the City's real property portfolio.
2. Significant economic development opportunities, such as the creation of new jobs or higher-paying jobs, or new *affordable housing* opportunities, can be generated if the City sells the property rather than retaining it within the City's real property portfolio.
3. Selling the property will provide a greater public benefit than retention or lease, on a short-term or long-term basis, of the property.

B. Additional Factors to be Considered

If a *City property* can be made available for sale under Section IV.A of this policy, the City may consider additional factors in determining whether the property should be sold, including:

1. Relief from potential City liabilities attributable to the property.
2. Reduction in City operational costs to maintain a property that does not either generate income for the City or provide any public benefits sufficient to justify those costs.
3. Generation of new tax revenue by returning the property to the property tax roll.
4. Stimulation of the local economy by providing opportunities for private sector investment.
5. Generation of revenue for the City's Capital Outlay Fund or an Enterprise Fund.
6. Generation of greater economic value to the City from a sale than a lease (if a lease is a feasible option).

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7. Production of *affordable housing* on the property or use of property sale proceeds to generate additional funds for *affordable housing* purposes.
8. Production of renewable energy resources.
9. Accomplishment of high job quality standards, one or more labor peace agreements or project labor agreements, or City objectives related to equity or climate action.

C. City's Clearance Process

The City will use the following review process to clear a *City property* for sale:

1. An asset-owning City department will notify the *Department* that it no longer needs one or more of its *City properties*, if this circumstance is not already identified in the Real Property Management Plan.
2. The *Department* will transmit a *clearance notification* via email memo to all asset-owning City department directors, the Independent Budget Analyst, all City Council offices, and the Office of the Mayor. The *clearance notification* will ask each recipient to review and respond on any *City property* identified as potential *surplus land* or exempt surplus land as defined in the *SLA* and advise the *Department* within 30 calendar days if the *City property* is needed for a City project or purpose. The *Department* may use one *clearance notification* for multiple *City properties*.
3. With Mayoral approval, any asset-owning City department may place a hold on a *City property* for up to five years from the date the *clearance notification* is transmitted by the *Department*, during which time the asset-owning City department placing a hold on the *City property* will accept financial responsibility for its maintenance and seek to include the property-specific project in the City's Capital Improvements Program within that timeframe. If the project is not included within the first two years, the *Department* may seek to release the hold. However, with Mayoral approval, any asset-owning City department may place a hold on a *City property* for longer than five years for a long-term planned development project included in the City's Capital Improvements Program.
4. When selling each *City property*, the City will comply with all applicable *SLA* requirements.

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5. When the *Department* submits a docket item to the City Council seeking a determination that a *City property* is *surplus land* or exempt surplus land, the *Department* will also, if feasible, seek the City Council's approval to sell or lease the property in compliance with the approval process described in this policy.

D. Sale Approval Process

The sale of each *City property* will be subject to the following requirements, where applicable:

1. The sale of a *City property* is subject to City Council approval at a specified price (if the *Department* has already negotiated the terms and conditions of a proposed purchase and sale agreement or disposition and development agreement), or alternatively, at a specified minimum price (if negotiations are pending).
2. In general, the City will sell each *City property* for a price equal to or greater than its current market value, as established by a *timely appraisal*. The written staff report to the City Council will attach a copy of the *timely appraisal*, identify the *qualified appraiser's* opinion of value as stated in the *timely appraisal*, and explain any changes in market conditions relevant to the proposed sale.
3. In certain instances (such as to facilitate the construction of *affordable housing*, the operation of a homeless shelter, or the promotion of some other community-serving use), the City Council may authorize the sale of a *City property* for a discounted price that is less than its current market value, as established by a *timely appraisal*. In those instances, the City Council is required to find that the transaction will serve one or more specified public purposes or provide one or more specified public benefits. The written staff report to the City Council will describe any applicable public purpose and present facts in support of the necessary finding.
4. Subject to the availability of sufficient City resources and funding, the City may pursue actions that will increase the value of a *City property* designated for sale. Those actions may include, for example, removing all unnecessary easements affecting title to a *City property*, rezoning a *City property* in accordance with the General Plan, the applicable community plan, or other City Council direction.



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5. Once the City Council authorizes the sale of a *City property*, the Mayor or designee will negotiate and enter into a purchase and sale agreement or disposition and development agreement to sell the property on terms and conditions specified by the City Council or otherwise deemed by the Mayor or designee to be reasonable and in the City's best interests. If all closing conditions in the purchase and sale agreement or disposition and development agreement are met, the Mayor or designee will take all necessary actions to sign and implement the escrow and closing documents to ensure a successful transaction.

E. Method of Sale

The City's general policy is to pursue the sale of each *City property* through a competitive process to ensure the widest possible exposure in the open marketplace. The City will sell each *City property* through a method consistent with the *SLA*, including the issuance of a notice of availability when required by the *SLA*. If a notice of availability is not required by the *SLA* for a particular transaction, the City may sell the *City property* by any method allowed by the Municipal Code, Council Policies, and other applicable laws and regulations, including, but not limited to direct negotiation, request for proposals, listing with a City-contracted broker, sealed bid, auction, or any other appropriate method as determined by the Mayor or designee. If the City Council authorizes the sale of a *City property* before the City has negotiated a purchase and sale agreement, the City Council will authorize the specific method or methods of sale (including any minimum purchase price).

F. Exclusively Negotiated Sales

It is the City's general policy to obtain the highest price for each *City property* by using a competitive sale process. The City Council may authorize an exclusively negotiated sale of any *City property*, however, when the City Council finds that one or more of the following criteria apply:

1. The City intends to sell the property to correct a site deficiency, such as a landlocked parcel (e.g., a parcel with no access to a public street or highway or to adequate utility services).
2. The City intends to sell a *City property* that is subject to a City public pipeline easement or other City public right-of-way easement, the City no longer requires fee ownership of the property, and the proposed sale is to an owner of fee title to real property contiguous to the *City property*. If

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necessary, the City will reserve a public pipeline or public right-of-way easement (as appropriate) of adequate size in the property within the deed conveying the *City property*.

3. The City intends to exchange real property in accordance with San Diego Municipal Code section 22.0904 (titled “Exchanges of Real Property”).
4. A political subdivision or public agency submits a request to acquire the property for a public purpose consistent with San Diego Municipal Code section 22.0907 (titled “Sales of Real Property to Public Agencies”).
5. The City receives an offer to purchase the property, provided that the offer both complies with the Municipal Code, any applicable Council Policies, and other applicable laws and regulations and includes the buyer’s commitment to accomplish one or more of the following: (a) develop improvements on the property that will serve one or more identified public purposes or provide one or more identified public benefits; or (b) develop *affordable housing* on the property; or (c) develop renewable energy resources on the property. The City may negotiate a right to repurchase the property or require the buyer to convey property ownership back to the City if the buyer does not timely meet specified site development conditions.
6. The City receives an acceptable offer to purchase the property within 12 months after the City offered the property at a public auction and did not receive any acceptable bids.

G. Transfer of Property Rights Involving Easements or Restrictive Covenants

In general, the City will receive compensation equal to current market value, as reflected in a *timely appraisal*, for each easement granted on a *City property*. No compensation to the City will be required, however, if it is clearly demonstrated to the *Department* that the easement will result in a direct benefit to the *City property*. The City will receive compensation equal to current market value, as reflected in a *timely appraisal*, for the removal of restrictive covenants or access rights previously paid for by the City or other governmental agency or previously reserved in the sale of a *City property*.

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H. Priority Handling of All Sales

Each sale of a *City property*, requiring either initial or subsequent actions by any Council Committee and the City Council, will be promptly docketed. If a Council Committee makes a recommendation or referral to the City Council on a proposed sale, the Council President's Office will endeavor to place the item on the docket of the next regular City Council meeting.

I. Sales of Property Rights for Public Utilities Installed by Private Entities

An applicant proposing to obtain any right to use a *City property* for public purposes, such as streets, sewers, and other public utilities, will compensate the City for the current market value of the property right obtained, as reflected in a *timely appraisal*. At the *Department's* discretion, if an adjacent landowner has conveyed, at no charge to the City, the same real property over which the adjacent landowner now seeks to acquire a public utility easement, the City may, for a period of 10 years following the date of conveyance to the City, allow the adjacent landowner to install public utilities serving the adjacent land and record a public utility easement over the affected portion of the *City property*, without the payment of compensation to the City. In this instance, the adjacent landowner will first provide proof to the *Department's* satisfaction, with concurrence from the asset-owning department or other affected City departments, that the public utility easement will not adversely affect or conflict with any prospective City use of the *City property*.

V. DISPOSITION OF CITY PROPERTY IF BY LEASE.

Section V of this policy establishes general guidelines for the leasing of any *City property*. Several other Council Policies set forth different requirements or processes based on a specific characteristic of the lease (e.g., the *City property* is located within Balboa Park or Mission Bay Park, the *City property* is airport or agricultural land, or the allowed use is for telecommunication purposes). If Section V of this policy conflicts with a more specific applicable Council Policy, law, or regulation, the more specific Council Policy, law, or regulation will control.

A. Leasing Authority

San Diego Municipal Code section 22.0901 (titled "Leases of Real Property") sets forth the process to authorize the leasing of any *City property*. Under that process, the Mayor or designee is authorized, without advertising, notice, or competitive bidding and upon such terms as the Mayor or designee may deem proper, to lease

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any *City property* for general purposes for a term of three years or less, and to lease any *City property* for a telecommunications facility using wireless technology for a term of 10 years or less. Otherwise, the City Council must authorize any lease of a *City property* with a term exceeding three years, including any amendment or renewal of an existing lease that will cause the total lease term to exceed three years.

B. New Leases

1. Criteria for Leasing

The City may consider leasing a *City property*, subject to compliance with the *SLA*, when one or more of the following criteria apply:

- a. The property is not required for current municipal use but is to be held for possible future use or assembled into a larger site and can be leased on an interim basis.
- b. The property cannot be sold because of legal restraints (e.g., property held under a tidelands trust grant or as a dedicated park).
- c. The City requires substantial control over the development, use, or reuse of the property.
- d. The property has the immediate potential of a high return to the City because of its high demand and type of use, such as commercial and industrial land.
- e. The property can be efficiently utilized by a provider of services needed by the City.
- f. The property can be leased to provide a public benefit, including, but not limited to, constructing or preserving *affordable housing*, creating new *affordable housing*, operating a homeless shelter, or pursuing a significant economic development opportunity.

2. Lessee Selection

The City's general policy for leasing *City property* is to obtain the highest rental value for each *City property* through a competitive process meant to ensure the widest possible exposure of the property to the open marketplace

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or to obtain demonstrated public benefits from the use of *City property*. The City will lease each *City property* through a method consistent with the *SLA* (if the *SLA* applies to the lease transaction), including the issuance of a notice of availability (NOA) when required by the *SLA*. If a NOA is not required by the *SLA* for a particular transaction, the City may lease the *City property* by any method allowed by the Municipal Code, applicable Council Policies, and other applicable laws and regulations, including, but not limited to, request for proposals, listing with a City-contracted broker, exclusive negotiations, or any other appropriate method as determined by the Mayor or designee.

The *Department* will evaluate all lease proposals for a *City property* based on the following factors, as applicable:

- a. The extent to which the proposed use complies with the City's long-term plans, policies, and regulations governing the property.
- b. The amount of rent offered.
- c. The financial feasibility of the proposal.
- d. The capability, expertise, and experience of the potential lessee with respect to the proposed leasehold development and operation.
- e. If new development is proposed, an acceptable development plan that includes a description of the development team and its qualifications.
- f. The name and identity of each person or entity that will have an interest in the proposed lease, to the extent the interest is required to be disclosed under City Charter section 225.
- g. Any special public benefits or added value to be derived.
- h. Any additional consideration offered to the City, including the lessee's commitment to develop any valuable improvements to the property.
- i. Compliance with existing City laws and regulations and adopted City policies and agreements applicable to City lessees or leases of

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*City property*, including job quality standards, labor peace agreements, project labor agreements, and equity policies.

- j. Any reduction in rent sought by a lessee in exchange for providing improvements or services that will benefit the local community and are not otherwise typically provided by the City, including the construction of new *affordable housing*, the long-term preservation or renewal of *affordable housing*, the conversion of existing market-rate housing units to *affordable housing*, or the operation of a homeless shelter.

C. General Requirements for All Leases of City Property

1. Market Rent and Appraisals

Subject to the exceptions set forth in this policy, each revenue-generating lease of a *City property*, whether structured as a *percentage lease* or a *flat rate lease*, will: (a) reflect terms and conditions consistent with prevailing trends in the leasing market; (b) require the lessee to pay initial rent equal to or greater than current market rent; and (c) ensure that the City will receive a market rate of return throughout the lease term.

The rent amount payable under each lease of a *City property* will be based on a *timely appraisal* of “market rent” as defined in the most recent edition of the Dictionary of Real Estate Appraisal published by the Appraisal Institute. The *timely appraisal* will reflect current market rent on the date of value as if the underlying land is vacant and available for development at its highest and best use, recognizing that market conditions may support a highest and best use that differs from the existing use. In completing the *timely appraisal*, the *qualified appraiser* will assume that the lessee has obtained all regulatory approvals allowing the lessee’s intended use and will not reflect a discount for costs and time delays associated with obtaining regulatory approvals.

The *Department* may instruct the *qualified appraiser* to consider as part of the *timely appraisal* the potential effect on current market rent arising from use or transfer restrictions and other contractual burdens or covenants placed on the land by the terms of the proposed lease between the City and the lessee, adopted or approved general or specific plans, and other similar constraints impacting highest and best use. However, the *qualified*

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*appraiser* will not consider the potential effect on current market rent of any of the following: (a) public improvements constructed by the lessee, either on or off the leasehold (unless the public improvements have already reverted to City ownership); (b) the lessee's costs for any environmental remediation; or (c) any incentives or concessions granted by the City at the inception of the lease.

Even if the leasehold appraisal qualifies as a *timely appraisal*, the *Department* will continue to monitor lease market conditions between the appraisal date and when the transaction is docketed for consideration by the City Council or any City Council Committee. If during that time there is a significant change in lease market conditions, the *Department* will consider whether an appraisal update is needed. The *Department* will identify all significant changes in lease market conditions in the written staff report to the City Council or City Council Committee.

If the *Department* determines that the anticipated rent amount is not high enough to justify the City's cost of obtaining a *timely appraisal*, the *Department* may choose a reliable alternative method to establish the rent amount, including a determination of current market rent through a statement of value (as opposed to a complete appraisal) prepared by a qualified *Department* staff member or an update to the most recent prior leasehold appraisal of the *City property*.

In certain instances (such as to facilitate the construction of *affordable housing*, the operation of a homeless shelter, or the promotion of some other community-serving use), the City Council may authorize the lease of a *City property* for a discounted rental rate that is less than current market rent, as established by a *timely appraisal*. In those instances, the City Council will make a finding that the transaction will serve one or more specified public purposes or provide one or more specified public benefits. The written staff report to the City Council will identify facts supporting the City Council's finding.

### 2. Percentage Leases

Each *percentage lease* will specify a minimum rent amount and the percentage rates for revenue-producing activities taking place on the leased *City property*.

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- a. Minimum Rent: The minimum rent amount in each new *percentage lease* will be no less than 100 percent of the current market rent as described above. Upon the lessee's request, the lease may allow rent discounts or other concessions, including a temporary abatement of a portion of the minimum rent during the lessee's anticipated construction of new leasehold improvements, so long as the lessee agrees to pay prevailing wage rates under San Diego Municipal Code section 22.3019 for all applicable construction or maintenance activities on the leased *City property*. The minimum rent will be periodically increased throughout the lease term, at intervals of not more than every five years, to reflect no less than 80 percent of the average annual total rent (minimum rent plus percentage rent) paid or accrued during the three years preceding the increase. The minimum rent will not decrease.
- b. Percentage Rates: Each new *percentage lease* will provide for adjustment of the percentage rates applicable to revenue-producing activities on the leased *City property* every 10 years to current market percentage rates for similar operations primarily within Southern California. The *Department* may negotiate the adjusted percentage rates based on the *Department's* best estimate of prevailing market percentage rates.

3. Flat Rate Leases

Each new *flat rate lease* will specify the initial rent amount and provide for the rent amount to increase at least every five years to reflect the then-current market rent. The rent amount will not decrease. All rent increases will be cumulative in nature and based on a then-current market rent appraisal, *Consumer Price Index* adjustments, or pre-determined periodic increases to rent.

4. Market Rent for Airport Land and Facilities

Municipal airports are subject to federal regulations requiring that rents and fees follow federal government rate setting for aeronautical services. Therefore, the City's municipal airports, including Montgomery-Gibbs Executive Airport and Brown Field Municipal Airport, will adhere to the following rent and appraisal requirements:



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- a. Aviation Land Rent: For each new lease on a *City property* comprised of aviation land, the rental rate will be set every year for each airport and approved by the City Council no earlier than 90 days from the beginning of each fiscal year (July 1 through June 30). The annual rental rate will be based on a *timely appraisal* of the current market rent, reflecting that aviation land can only be used for aviation purposes. Each approved annual rental rate will become effective at the beginning of the fiscal year and will be published on the *Department's* website.
- b. Aviation Facilities/Improved-Land Leases: For each new lease on a *City property* comprised of City-owned aviation buildings and improvements, the rental rate will be set every year for each airport and approved by the City Council no earlier than 90 days from the beginning of each fiscal year. The annual rental rate will be based on a *timely appraisal* of the current market rent. Each approved annual rental rate will become effective at the beginning of the fiscal year and will be published on the *Department's* website.
- c. Otherwise, the general provisions of Section V of this policy, including the provisions related to periodic rent increases, will apply to City-owned aviation land, buildings, and improvements.

5. Lease Term

For any lease requiring the lessee's installation of capital improvements, the length of a lease term will be based on the cost and scope of the capital improvements and the economic life expectancy of those improvements. To determine these factors, the *Department* may rely on cost estimating and economic life expectancy resources such as tables provided by Marshall Valuation Service or a similar service. The *Department* may consider other relevant information in determining if a longer lease term is warranted, such as if the proposed leasehold improvements are expected to generate above-average financial returns to the City or will significantly improve the quality of the *City property* for a demonstrated longer period than normal for the pertinent asset class of the leased property. For any lease not requiring the lessee's installation of capital improvements, the length of a lease term will be based on the *Department's* evaluation of current market trends for the asset class of the leased property.

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6. Lease Amendments

Each amendment to a long-term lease (i.e., a lease with an initial term of more than three years) will require City Council approval, unless otherwise specified by the City Charter, the Municipal Code, or the Council-approved provisions of the existing lease. In each amendment to a long-term lease, the City will incorporate current City-standard lease provisions and adjust the rent amount to current market rent.

7. Subleases

A lessee may sublease all or part of the leased property to a qualified sublessee, subject to the City's prior written approval at the Mayor or designee's discretion. The City will not approve any sublease that would be detrimental to the City's rights under the primary lease or for a use that is inconsistent with uses allowed by the primary lease, or if the primary lessee is in default of the primary lease. The Mayor or designee may consent to any sublease that meets these conditions and does not require an amendment of the primary lease (i.e., the lessee will remain obligated to perform all of its obligations under the primary lease). Each new lease, whether structured as a *flat rate lease* or a *percentage lease*, will require the lessee to pay to the City a minimum of 50 percent of all revenues received by the lessee from all sublessees during the sublease term.

8. Leasehold Financing

The City will not allow its fee estate in any *City property* to be encumbered as security for any obligation of a lessee. The Mayor or designee may approve deeds of trust against the leasehold estate securing repayment of loans to the lessee so long as the lessee commits in writing to use all loan proceeds for City-authorized improvements of the leased property that are constructed or installed in accordance with the terms and conditions of the lease. The *Department* will review the proposed financing documents for the lessee's loan to ensure that the lessee is required to use all loan proceeds for leasehold improvements and that the lessee's operating income from its leasehold operations is adequate to service the lessee's total debt and expenses, including rent. The maximum aggregate loan amount will not exceed 75 percent loan-to-value, where "value" refers to the current market value of the leasehold improvements as determined by a lender's appraisal

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reviewed and approved by the *Department's* staff. The term of the lessee's loan will not exceed the term of the lease.

After the lessee completes all leasehold improvements authorized in the lease, the lessee may request that the City approve a new loan or the refinancing of an existing loan secured by a deed of trust against the leasehold estate for the purpose of reducing equity or financing the sale of the leasehold estate. The Mayor or designee may approve this type of leasehold financing only if the *Department* determines that: (a) the lessee satisfactorily completed the leasehold improvements in accordance with the lease; and (b) the financing transaction will result in substantial benefit to the City, such as the City's receipt of a percentage share of the loan proceeds or an increase in the rent, either of which will be based on commercially reasonable comparable transactions in the lease market.

9. Leasehold Improvements

Each long-term lease of a *City property* will provide that, except for leasehold improvements included in a development plan approved as part of the lease, the Mayor or designee must give prior written approval, in their sole discretion, before the lessee installs any leasehold improvements or alterations to existing improvements. All leasehold improvements will comply with the Municipal Code and applicable Council Policies. Additionally, each long-term lease will specify that the leasehold improvements installed by the lessee will be administered in one of the following ways upon the termination or expiration of the lease: (a) the City may elect to take ownership of the leasehold improvements, at no cost to the City; or (b) the City may direct the lessee to remove any leasehold improvements and restore the *City property* to its prior condition, at the lessee's sole cost.

10. Responsibility for Maintenance and Utility Costs

Each lease of a *City property* will require the lessee, including any nonprofit entity, to maintain all leasehold improvements on the property at the lessee's sole expense and be responsible for the cost of all utilities.

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11. Lease Audits

Each new lease of a *City property* will include a provision reserving the City's right to audit all pertinent financial matters, including lease revenues and expenses. The City Treasurer will conduct an audit of each *percentage lease* covering the first year of the lessee's operations to establish proper reporting procedures. Thereafter, the City Treasurer will conduct an audit covering the lessee's operations at least once every five years. The City Treasurer may conduct more frequent audits if deemed necessary with respect to a particular *percentage lease* after discussing the need for increased frequency with the *Department*. In addition, the City Treasurer will create and submit to the *Department*, at least 60 days before the start of each fiscal year, an annual work plan of leases to be audited during the upcoming fiscal year.

12. Leasehold Assignments

The *Department* will evaluate each request for assignment of lease using the criteria for evaluating a lease proposal. The *Department* may consent to any assignment that does not require an amendment of the primary lease. The *Department's* consent should be contingent on the payment to the City of additional consideration, which may include a percentage share of the purchase price for the leasehold estate or an increase in the rent, either of which will be based on commercially reasonable comparable transactions in the lease market.

13. Additional Consideration

A lessee will pay to the City no less than two percent of the value of all sale or transfer consideration received by the lessee upon the lessee's completion of either of the following transactions: (a) a sale of the lessee's leasehold estate resulting in a lease assignment; and (b) a sublease of 51 percent or greater of the lessee's leasehold estate. If new financing is involved in a sale of the lessee's leasehold estate, the requirements of Section V.C.8 of this policy will apply.

14. Transaction Processing Fees

The *Department* will charge transaction processing fees for each proposed lease of a *City property* in accordance with the fee schedule adopted under

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Administrative Regulation 95.25. However, the *Department* may waive or reduce those fees in its sole discretion if the *Department* determines that the lease will promote a substantial public benefit, such as the production of *affordable housing* or the provision of community services.

D. Lease Extensions

Subject to the City's compliance with the *SLA*, the City may consider requests from any existing lessee for a new lease or an extension of its current lease. Generally, the City will approve a new lease or a lease extension for an existing lessee only if the lessee's proposal will accomplish one or more of the following:

- (1) result in capital investment in leasehold improvements;
- (2) result in redevelopment of the property;
- (3) incorporate City standard lease provisions into the existing lease; or
- (4) contain lease terms that are competitive in the current market.

This section provides a detailed explanation of the process the City should follow in determining whether a lessee qualifies for a lease extension, the length of the lease extension, and the amount of compensation to be provided to the City for the lease extension.

1. Lessee's Request for Lease Extension

If an existing lessee is interested in requesting a lease extension, the lessee will, no later than 180 days before the existing lease term is scheduled to expire, submit to the *Department* a written proposal including all the following information to the extent applicable under the circumstances:

- a. Description of proposed capital investment and improvement of the existing leasehold sufficient for the *Department* to understand the scope of the improvement and compliance with City policies and regulations.
- b. Description of the redevelopment concept and the proposed project sufficient for the *Department* to understand the scope of the entire development concept, which may include renderings and drawings showing a scaled site layout, interiors and exteriors of all significant buildings, elevations, parking lot layout, landscape development

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and layout, preliminary design concept, and any other prominent features.

- c. Evidence that the lessee qualifies as a “tenant in good standing” as described in Section V.D.2 of this policy.
- d. Any proposed changes to the ownership or control of the lessee.
- e. Description of the development team and its qualifications.
- f. Proposed lease extension terms (including any applicable minimum rent, percentage rent by category of gross revenue, and compensation to the City for deferral of recovery of its reversionary interest in the *City property*) and a reasonable justification for those proposed terms.
- g. Financial feasibility of the lease extension, including detailed pro forma cash flows comparing (1) the City’s anticipated revenue with the existing lease in place through its current expiration date to (2) the City’s anticipated revenue with the proposed lease term extension for the new development.
- h. Anticipated development cost with qualifying capital investment, as set forth in Section V.D.3.a of this policy.
- i. Justification that the existing lessee or operator can optimize the use of the property and the economic return or public benefit to the City.
- j. Evidence that the lessee has the expertise and financial capability to develop and operate the property (such as an established track record of prior successful development projects, a substantiated estimate of project costs and funding sources, etc.), particularly if the proposed development is different from the existing use.
- k. Completed lessee questionnaire in a form provided by the *Department*.
- l. Any additional information deemed reasonably necessary or useful by the *Department* to complete its analysis in making a

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recommendation to the City Council on the proposed lease extension.

2. Tenant in Good Standing

When considering a proposed lease extension, the *Department* will review the existing lessee's history to ensure the lessee is a tenant in good standing with respect to all the following criteria:

- a. Maintenance, repair, and replacement of the leasehold improvements, free of deferred maintenance.
- b. Prompt payment history under the current lease (i.e., generally, no more than one late payment per year).
- c. Compliance with provisions of the current lease, including use provisions, insurance requirements, consents to sublease, and regulatory permitting processes.
- d. Maximization of the gross revenue of the lessee's business (only with respect to the proposed extension of a *percentage lease*).
- e. Compliance with City policies where applicable to the lessee, including, but not limited to, public accommodation, accessibility, non-discrimination, contracting, earned sick leave ordinance, compensated leave, living wage, and prevailing wage.
- f. Compliance with the City's climate action policies.

The *Department* should not negotiate a lease extension with the lessee if the *Department* determines that the existing lessee does not substantially meet the above criteria for a "tenant in good standing."

3. Qualifying Capital Investment and Extended Lease Term

- a. **Qualifying Capital Investment:** To qualify for a lease extension, a lessee must propose a capital investment that increases the value or useful life of the leasehold improvements by an amount more than can be reasonably amortized over the remaining lease term, is not recurring in nature, is at least 10 percent of the value of the existing

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improvements, and otherwise complies with all City codes and policies. The *Department* will confer with and seek concurrence from the City Engineer or their designee on the proposed improvements that require an engineer's review or assessment. The term of an extended lease will not exceed the life expectancy of the new or expanded improvements. At the *Department's* sole discretion, the lessee's qualifying capital investment may include the value of a superior improvement condition at the leased property and the value of specialized fixtures necessary for the property's operation that will remain in place for the extended lease term (e.g., stadium lighting, agricultural irrigation improvements, a boat docking system, golf bunkers, etc.). The *Department* may measure the value of a superior improvement condition by the lessee's documented costs toward improvements, or by replacement cost and depreciation tables such as those published by Marshall Valuation Service. The *Department* will exclude the following expenditures from any calculation of the lessee's qualifying capital investment: (a) the acquisition of any furniture, fixtures, and equipment (except for specialized fixtures, as described above); (b) expenditures to correct deferred maintenance or conduct ongoing maintenance on the leasehold improvements; (c) future expenditures for repairs intended to keep the leasehold improvements in good condition; and (d) the cost of environmental remediation or cleanup.

- b. **Extended Lease Term:** The length of the extended lease term should be based on the following factors: (1) the magnitude of the lessee's qualifying capital investment in the leasehold improvements; (2) the reasonable life expectancy of the leasehold improvements; and (3) the estimated total replacement cost of the leasehold improvements once the lessee has completed the development. In addition, the *Department* may determine that a longer extended lease term is warranted if the lessee substantiates, to the *Department's* reasonable satisfaction, the lessee's prior capital investment in leasehold improvements, so long as the prior capital investment has not already been credited toward a previous lease extension and the prior capital investment did not occur more than 24 months before the proposed lease extension. The *Department* may consider other relevant information in determining if a longer extended lease term is warranted, such as if the lessee's qualifying capital investment is expected to generate above-average returns (only with respect to a



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*percentage lease*), will reposition the property to a higher standard of quality, or will result in a public benefit (for example, the preservation or production of *affordable housing*).

4. Payment for City’s Deferral of Reversionary Interest

An amended lease that memorializes an extended lease term will require the lessee to pay compensation to the City in consideration of the reversionary value of the leasehold improvements that the City had the right to claim upon the current lease’s expiration or termination, or other compensation for the City’s deferral of its reversionary interest in the leasehold improvements. The lessee’s compensation (or equivalent value) to the City may include: (a) an upfront payment made at the beginning of the extended term; (b) a payment obligation to be fully repaid, with accrued interest, before the end of the extended term; or (c) a commitment to make significant qualifying capital investments in leasehold improvements during the extended term.

5. Market Rent

The rent amount in any amended lease that memorializes an extended lease term will be updated to the current market rent consistent with Section V.C.1 above.

E. Nonprofit Leases

The *Department* will present any proposed nonprofit leases to the City Council based on the criteria established in Council Policy 700-12.

F. License Agreements

If the City proposes to enter into a license agreement or similar agreement (or an amendment to an existing agreement of this nature) allowing a third party to access *City property* for a period exceeding 10 years (including any extension options), the agreement or amendment will require City Council approval.

CROSS REFERENCE:

Council Policy 600-43 - City of San Diego Wireless Communication Facilities Policy

Council Policy 700-04 - Balboa Park Uses and Occupancy

Council Policy 700-08 - Mission Bay Park Policies

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Council Policy 700-12 - Disposition of City Property to Nonprofit Organizations  
Council Policy 700-15 - Airport Policy

**HISTORY:**

“Assignment and/or Subletting of City Leases”

Adopted by Resolution R-169946 - 03/15/1962

Retitled to “Disposition of Surplus City-Owned Real Property” and

Amended by Resolution R-208091 - 06/05/1973

Amended by Resolution R-212957 - 04/04/1975

Amended by Resolution R-217309 - 12/21/1976

Amended by Resolution R-218125 - 04/12/1977

Amended by Resolution R-219507 - 10/19/1977

Amended by Resolution R-220842 - 05/09/1978

Amended by Resolution R-224022 - 07/16/1979

Amended by Resolution R-250319 - 10/01/1979

Amended by Resolution R-251154 - 02/11/1980

Amended by Resolution R-251943 - 06/02/1980

Amended by Resolution R-252266 - 07/14/1980

Amended by Resolution R-252313 - 07/21/1980

Amended by Resolution R-252966 - 10/27/1980

Amended by Resolution R-255014 - 09/15/1981

Amended by Resolution R-258160 - 03/28/1983

Amended by Resolution R-258896 - 07/18/1983

Amended by Resolution R-300187 - 03/01/2005

Amended by Resolution R-304142 - 10/17/2008

Amended by Resolution R-307913 - 12/18/2012