

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

SUBJECT: ACQUISITION OF REAL PROPERTY
POLICY NO.: 700-32
EFFECTIVE DATE: TBD

BACKGROUND:

San Diego Charter section 1 provides, in pertinent part, that the City, in its capacity as a municipal corporation, “may own and acquire property within or without its boundaries for . . . governmental or proprietary, or any municipal purpose . . . by succession, annexation, purchase, devise, lease, gift or condemnation.” The City often acquires real property to carry out specific public purposes, such as capital improvement projects or open space preservation.

DEFINITIONS:

“*Acquisition*” (or “*acquisitions*”) means the City’s process of acquiring *property*, including allocating funding for, or contracting to acquire, *property*.

“*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.

“*Due diligence checklist*” means a written checklist, prepared by the *Department*, guiding the *Department* staff’s due diligence investigations of *property* before the City’s *acquisition* of the *property*.

“*Eminent Domain Law*” means, collectively, (i) the California Eminent Domain Law, California Code of Civil Procedure sections 1230.010 through 1273.050, and (ii) all related statutes and regulations applicable to the City’s exercise of its power of eminent domain, all as may be amended or supplemented from time to time.

“*Owner*” means the owner of *property* that is the subject of a proposed *acquisition*.

“*Property*” means any estate or interest in real property, including improved land, unimproved land, and land rights such as public right-of-way easements.

“*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.

“*Relocation Law*” means, collectively, the California Relocation Assistance Act, California Government Code sections 7260 through 7277, and all related statutes and regulations, all as may be amended or supplemented from time to time.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

“*Timely appraisal*” means a real estate appraisal completed by a *qualified appraiser* within 12 months before the date on which the City Council authorizes the *acquisition*.

PURPOSE:

The policy establishes a procedure for City *acquisitions* whenever City Council approval is required. Using a best practice approach, the *Department* will be responsible for all *acquisitions* by the City. The *Department* will coordinate with the Office of the City Attorney on any *acquisitions*, including but not limited to the City’s exercise of its power of eminent domain. This policy provides guidance to the *Department* in deciding whether to recommend that the City Council approve a City contract for, or the City’s allocation of funding for, any *acquisition*.

POLICY:

For all proposed *acquisitions*, the *Department* must carry out long-term goals established by the Mayor or the City Council (e.g., to fulfill a municipal purpose, such as constructing a new fire station or creating parkland). The *Department* also must evaluate the benefit derived from the City’s use of the *property* proposed to be acquired. The City will carry out all *acquisitions* in accordance with applicable Federal and State of California laws, dealing with each *owner* fairly and equitably.

This policy will not apply to any *acquisition* involving a donation of *property* governed by Council Policy 100-02, Donation Acceptance, or Council Policy 600-31, Open Space Acquisition through Donation or Assessment District Proceedings. Moreover, nothing in this policy is intended to supersede San Diego Municipal Code section 22.3110(a), which allows certain *acquisitions* to occur without City Council approval.

GUIDELINES:

The City will adhere to the following guidelines where applicable:

Guidelines Specific to the Exercise of Eminent Domain Authority

1. The City will reasonably try to complete each *acquisition* expeditiously through negotiations, before exercising the City’s power of eminent domain. The City will always strive to assure consistent treatment of *owners* and instill public confidence in the City’s *acquisition* practices.
2. The City will exercise its power of eminent domain only when the City requires immediate possession of the *property* and the City’s negotiations with the *owner* are at an impasse (i.e., the City cannot acquire the *property* through negotiation at a price approximating the fair market value reflected in a *timely appraisal*).
3. The City will only make an offer to purchase *property* after the City Council appropriates funding from a specified funding source for the *acquisition*.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

4. The City's offer to purchase any *property* and provision of relevant information to the *owner* will comply with all applicable provisions of the *Eminent Domain Law*, including California Government Code section 7267.1 where the City seeks to acquire the *property* by negotiation or California Government Code section 7267.2 where negotiation is unsuccessful and the City seeks to acquire the *property* by exercising its power of eminent domain.
5. If the City intends to exercise its power of eminent domain for a proposed *acquisition*, the City will institute formal eminent domain proceedings with respect to the *property*. The City will not use the threat of exercising its power of eminent domain to coerce the *owner* into an *acquisition* agreement. Instead, the City will only exercise its power of eminent domain in the following situations: (a) the *owner* rejects the City's initial purchase offer, and negotiations for the *acquisition* are at an impasse; (b) time constraints imposed by funding sources cannot be met if the City continues with the negotiation process; or (c) the City must exercise its power of eminent domain to ensure compliance with a construction schedule.
6. The City will offer to acquire the *owner's* entire *property*, if the *owner* so desires, where the *acquisition* of only a portion of the *property* would cause the remaining portion of the *property* to be, in the *Department's* reasonable judgment, an uneconomic remnant.
7. If the City is required by the *Eminent Domain Law*, the *Relocation Law*, or a valid contract to provide relocation assistance to the *owners* or occupants of any *property*, the City will fairly administer this assistance to ensure all *owners* and occupants of the *property* receive all benefits to which they are legally entitled. The City will comply with the *Relocation Law*, as applicable, in all *acquisitions*.

Additional Guidelines

8. The *Department* will complete, and the Office of the Independent Budget Analyst will review expeditiously, all due diligence steps identified in the *due diligence checklist* before recommending that the City Council approve a proposed *acquisition*. The *Department* will periodically revisit the sufficiency of the *due diligence checklist* with reference to then current prevailing best practices for *acquisitions* and, if appropriate, revise the *due diligence checklist*. At a minimum, the *due diligence checklist* will include the *Department's* completion or review of the following items: (a) written report of the *property's* title condition; (b) *timely appraisal*; (c) site evaluation, including assessment of environmental, geotechnical, and historic site conditions, if applicable; and (d) independent building condition assessment, if applicable.
9. When the *Department* recommends that the City Council approve a proposed *acquisition* with respect to improved or unimproved land, the written staff report to the City Council will disclose the outcome of the *Department's* investigations of the *property* based on the *due diligence checklist*. The staff report will confirm that the City has had oversight of the appraisal process and retained its own *qualified appraiser*. A copy of the *timely appraisal*, the *qualified appraiser's* opinion of value as stated in the *timely appraisal* and explanation of any changes in market conditions relevant to the proposed *acquisition* will be attached to the staff

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

report. For the City's proposed *acquisition of property* improved with an existing building, the acquiring department will also complete, and the *Department* will disclose in the written staff report to the City Council, the following items:

- a. Proposed use for the building and to what extent it fits the business case;
 - b. Proposed tenant improvements and associated costs, if any;
 - c. Financial/economic analysis, which considers potential alternative *acquisition* sites or other available alternatives to the proposed *acquisition*;
 - d. Confirmation from the City's Department of Finance that adequate funds are available to the City for the proposed *acquisition*; and
 - e. Independent building condition assessment.
10. The City may retain a qualified real estate broker to assist the City in any proposed *acquisition* if the *Department* determines that the brokerage services are needed due to the complexity of the transaction, market conditions, or other circumstances. 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 competitive solicitation process. Each selected broker must hold a valid State of California real estate broker's license. Whenever the *Department* asks the City Council to authorize an *acquisition* in 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. If the *Department* obtains significant input from any consultant or advisor on a proposed *acquisition*, the *Department* will cause the consultant or advisor to enter into a signed contract with the City, as required by the City Charter and Municipal Code, in the City's then standard form and to complete and submit a consultant determination form and, if applicable, a statement of economic interest (Form 700) filed with the Office of the City Clerk.
11. When the City acquires *property* to construct a public improvement, the City will schedule the construction activities, to the extent practicable, so that no person or entity lawfully occupying the *property* is required to move from a dwelling or business, assuming a replacement dwelling is available, without at least 90 days' written notice from the City.

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 action item in the written staff report.

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

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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