



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: September 11, 2018

IBA Report Number: 18-30

Smart Growth and Land Use Committee Meeting Date: September 19, 2018

Item Number: TBD

Proposed Response to Grand Jury Report “San Diego Continues To Lose Money On Stadium Management”

OVERVIEW

On May 22, 2018, the San Diego County Grand Jury filed a report, directed to the San Diego City Council, entitled “San Diego Continues To Lose Money On Stadium Management.” The report discusses issues related to naming rights and suite sales contracts at the SDCCU Stadium. The Grand Jury report includes twelve findings and four recommendations directed to the City Council and Mayor.

Per the Grand Jury report, the City Council is required to provide comments to the Presiding Judge of the San Diego Superior Court on the applicable findings and recommendations within 90 days. However, due to the summer legislative recess, the Mayor’s and Council President’s offices requested and received an extension for their responses to November 16, 2018.

In responding to each Grand Jury finding, the City is required to either (1) agree with the finding or (2) disagree wholly or partially with the finding. Responses to Grand Jury recommendations must indicate that each recommendation (1) has been implemented; (2) has not yet been implemented, but will be in the future; (3) requires further analysis; or (4) will not be implemented because it is not warranted or is not reasonable. Explanations for responses are requested when applicable.

The Office of the IBA worked collaboratively with the Mayor’s Office, Real Estate Assets Department and Purchasing and Contracting Department to develop a proposed joint Council/Mayoral response to the Grand Jury report, which is included as Attachment 1 to this

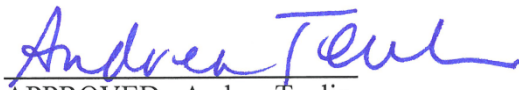
report. We request that the Smart Growth and Land Use Committee provide feedback and forward its approved proposed response to the full Council.



Charles E. Modica, Jr.
Fiscal & Policy Analyst



Lisa Byrne
Fiscal & Policy Analyst



APPROVED: Andrea Tevlin
Independent Budget Analyst

Attachments:

1. Proposed City Response to San Diego County Grand Jury Report Entitled “San Diego Continues To Lose Money On Stadium Management”
2. San Diego County Grand Jury Report Entitled “San Diego Continues To Lose Money On Stadium Management”

**Proposed City Response to
San Diego County Grand Jury Report Titled
“San Diego Continues to Lose Money on Stadium Management”**

Pursuant to California Penal Code section 933(c), the City of San Diego provides the following responses to the findings and recommendations pertaining to the City of San Diego that are included in the above-referenced Grand Jury Report:

FINDINGS 01 THROUGH 12

Finding 01: *The Chargers’ departure gave the City an opportunity to recoup revenue on Stadium advertising and suite sales.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

Finding 02: *Stadium staff could have sold the Stadium advertising.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

Ensuring that stadium advertising revenues are maximized requires sales staff, expertise in negotiating advertising agreements, knowledge of market contacts and relationships, and knowledge of industry standard advertising rates. The City’s staff at the stadium currently consists of a stadium manager, a program coordinator, a senior management analyst, an administrative aide, and a clerical assistant, and none are qualified to sell stadium advertising. Developing staff with this expertise would have diverted resources away from the actual management of the stadium and booking of revenue-producing events at the stadium.

In FY18, the budgeted operating revenue for the stadium was \$3.0 million. However, actual revenue for FY18 was \$6.7 million, in large part because the stadium’s staff was able to focus on booking revenue-producing events at the stadium.

While the City could have attempted to sell stadium advertising, the net gain of \$3.7 million from booking events, in contrast to the City’s FY 18 revenue from suite sales of \$263,000 and from advertising sales of \$475,000, makes it clear that City taxpayers were best served by focusing the City’s efforts in areas of the stadium staff’s expertise in recruiting revenue-producing events.

Finding 03: *Stadium staff could have sold the suites.*

Response: The Mayor and City Council partially disagree with the Grand Jury’s finding.

Similar to the City’s response to Finding 02, selling stadium suites requires sales staff, expertise in negotiating suite sales agreements, knowledge of market contacts and

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relationships, and knowledge of industry standard suite rates, none of which the City’s staff located at the stadium are qualified to do. Developing staff with this expertise would have diverted resources away from the actual management of the stadium and booking revenue-producing events at the stadium.

Finding 04: *The City gave away revenue it could have retained.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

This finding assumes that the City’s existing staff, which lacks advertising and suite sales expertise, could have generated greater advertising and suite sales revenues than the professionals the City contracted with to perform this function.

Finding 05: *The City allowed work on the contract before its effective date.*

Response: The Mayor and City Council agree with the Grand Jury’s finding.

Fox Sports did start work prior to the effective date of the contract. Their work consisted of developing an RFP and soliciting interest in the market. However, as no costs were incurred during this process and no commitments would have been binding or finalized without a fully executed contract in place, risk to the City was limited.

Finding 06: *The City allowed Stadium suites to be sold before it authorized the sales.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Suites were marketed prior to commencement of the agreement with the Bowl Association, however, no suites were sold prior to execution of the agreement.

Finding 08: *The City needs rules on contracts that allow private parties to issue RFPs on the City’s behalf.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

The criteria under which the City might chose a third party to issue an RFP would be based on specific circumstances and expertise. Additionally, while Fox Sports did make solicitations for potential naming rights advertisers, this solicitation was not an RFP issued on behalf of the City. The San Diego Municipal Code (SDMC) addressing the competitive process for contracts governs only the City’s selection of contractors. It does not address how third-party contractors conduct their business, including how they find vendors or advertisers, but those third parties are required to mirror as closely as possible the practices of the City.

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Finding 09: *The City had the time and expertise to issue its own renaming RFP in time for the Stadium events of September 2017.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Had the City conducted a search for a naming rights sponsor, it would have been through the RFS (Request for Sponsorship) process. Qualcomm’s naming rights expired on June 13, 2017, and the City negotiated up until that expiration for Qualcomm to renew. Ultimately, Qualcomm did not renew their sponsorship agreement.

Initiating a RFS process after the Qualcomm negotiations concluded would not have allowed the City to contract with a naming rights sponsor in time for the commencement of the 2017 college football season. This would have greatly reduced the sponsorship revenue available for those naming rights.

Finding 10: *The City needs rules on third parties judging responses to RFPs.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

In some cases a third party will have special expertise that would be valuable for judging RFP responses, and the same rules would apply to that third party as apply to City employees. However, as noted in the City’s response to Finding 08, the solicitation Fox Sports made for potential naming rights was not a City RFP.

Finding 11: *The Fox Sports and Bowl Association contracts did not conform to the requirements for sole source status.*

Response: The Mayor and City Council disagree with the Grand Jury’s finding.

Sole source certifications for both agreements were reviewed by the City Attorney’s Office and approved by the Purchasing & Contracting Department in compliance with the SDMC. Because the City planned to cease scheduling events in December 2018, the relatively short period of time created a challenge in garnering interest from available suppliers of private suite sellers and stadium sponsorship sales.

In addition, the first game of the 2017 San Diego State Aztecs Football season was scheduled for September 2, 2017, so it was imperative that suites and advertising sales be maximized prior to that date.

Further, the City already had a contractual relationship with the Bowl Association associated with the Bowl Association hosting Holiday Bowl at the stadium since 1978. The City also has had a contractual relationship with Fox Sports, as Fox Sports is a partner of

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San Diego State University and the University holds a Use and Occupancy Agreement to play collegiate football games at the stadium.

Finding 12: *The City needs rules on valuing revenue-generating contracts.*

Response: **The Mayor and City Council partially disagree with the Grand Jury’s finding.**

Rules on valuing revenue-generated contracts are important, and the City has already adopted a number of them: the City has multiple Council Policies governing how to value revenue-generating contracts, including Council Policy 700-10 (Disposition of City-Owned Real Property), 700-12 (Disposition of City Property to Nonprofit Organizations), 700-41 (Use of the RFP Process for Lease of City-Owned Land) and 900-20 (Naming of City Assets). See attached Council Policies (Attachment A).

RECOMMENDATIONS 18-16 through 18-19

Recommendation 18-16: *Establish policies and procedures for City contracts with private parties in which the private party will issue a Request for Proposal on the City’s behalf and include rules on when the private party can participate in judging the responses to that RFP.*

Response: **The recommendation will not be implemented because it is not warranted.**

The solicitation Fox Sports made for potential naming rights advertisers was not an RFP as defined in the SDMC. Further, while third parties may sit on City selection panels when the City is following its RFP process, this process did not apply in this case.

Third parties generally do not issue RFPs on behalf of the City. However, if a third party were to issue an RFP or sit on a selection panel, the same rules would apply to that third party as apply to City employees. The criteria under which the City might chose a third party to issue an RFP and/or sit on a selection panel would be based on expertise.

Recommendation 18-17: *Establish policies and procedures for selling the naming rights for City assets leased to private parties.*

Response: **The recommendation has been implemented.**

Naming rights are either permitted per lease agreements or as specified in Council Policy 900-20 (Naming of City Assets).

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Recommendation 18-18: *Establish policies and procedures for valuing revenue-generating contracts.*

Response: The recommendation has been implemented.

The City already has multiple council policies governing how to value revenue-generating contracts, including Council Policy 700-10 (Disposition of City-Owned Real Property), 700-12 (Disposition of City Property to Nonprofit Organizations), 700-41 (Use of the RFP Process for Lease of City-Owned Land) and 900-20 (Naming of City Assets).

If a particular valuation falls outside the expertise of City staff, an outside contractor with expertise in that form of valuation is hired to perform the valuation.

Recommendation 18-19: *Require the Bowl Association to follow standard government accounting practices in its monthly and annual income statements.*

Response: The recommendation has been implemented.

This is already required in the agreement between the Bowl Association and the City of San Diego in Exhibit A (Scope of Work).

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: DISPOSITION OF CITY-OWNED REAL PROPERTY
POLICY NO.: 700-10
EFFECTIVE DATE: December 18, 2012

BACKGROUND:

The City of San Diego is owner of substantial real property which is used for various municipal purposes. As public service needs change, the requirements for these properties may be revised and, on occasion, certain parcels may be in excess of the City's current need. This requires that each individual site be reviewed in terms of its potential for future public use, as well as its potential economic benefit to the City.

The proceeds from the sale of City-owned lands are utilized for Capital Improvements Program projects, as required by the City Charter, Section 77, and the revenues generated from leases are normally utilized for General Fund purposes unless the property sold or leased belonged to an Enterprise Fund.

PURPOSE:

It is the purpose of this policy 1) to establish a procedure by which unused and marginally used City-owned real estate is reviewed for its potential public use, and for designating unneeded parcels for lease or sale; 2) to provide methodology for the sale or exchange of City-owned real estate and 3) to establish policies for the leasing of City-owned real property.

POLICY:

It is the City's policy to manage its real estate assets so that municipal needs which rely on these assets may be properly implemented. It is not the City's policy to speculate in real estate. The Mayor will review City-owned real estate not used for municipal purposes and determine the appropriate use of the property. Those properties not needed for either City or public use within the foreseeable future, may be made available for lease or sale.

The City shall optimize the sale price or lease rent from City-owned real estate based on relevant factors, including 1) an appraisal reflecting current market value when either a transaction or authorization to sell or lease is presented to the City Council, 2) prevailing economic conditions and market trends, and 3) any special benefits to accrue from the sale or lease.

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The City shall seek market value for its properties. Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by Council Resolution setting forth the amount of the discount and the justification for the discount.

The Real Estate Assets Department shall prepare and present to the City Council a comprehensive Portfolio Management Plan on an annual basis, with periodic reviews and as-needed updates at City Council Committee.

The Portfolio Management Plan shall include an overall review of the City's real estate portfolio (or inventory), an operating plan for corporate property, a disposition plan for surplus property, market research to support anticipated transactions and a request for authority to act within defined parameters (as described in this policy).

The major elements of the Portfolio Plan are to include:

- Property evaluation and characterization of real estate assets
- Strategy for City occupied real estate
- Investment Portfolio Plan (Leases to for-profit tenants)
- Review of Not-for-profit leases
- Disposition Plan for surplus assets
- Business Case development review to support proposed transactions
- Legal document development and review

POLICY REVIEW:

Revised Council Policy 700-10 shall be reviewed by the City Council for effectiveness one year after adoption and periodically thereafter as needed.

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SALE OF CITY OWNED REAL ESTATE

PROCEDURE:

A. Real Estate Review

As part of an overall portfolio management plan for the City's real estate assets, the Mayor's staff will review the City's property inventory to determine which properties are no longer needed for public facilities or to support the elements of the General Plan and whose disposition will provide a greater public benefit. A City owned property may become available for sale if:

- The property is not currently used by a City department or does not support a municipal function.
- The property is vacant and has no foreseeable use by the City.
- The property is a non-performing or under-performing asset and greater value can be generated by its sale.
- Significant economic development opportunities can be generated by selling the property.

Factors to be considered in determining whether a property should be sold include:

- Will the City be relieved of potential liabilities and/or cost of maintaining property that does not generate income or provide public benefit?
- Property tax increment that will be created by returning the properties to the tax rolls.
- Stimulation of the economy by providing opportunities for private sector investment.
- Generation of revenue for the Capital Outlay Fund or an Enterprise Fund.
- The sale of the property will generate greater economic value than a ground lease, if a ground lease is a feasible option.

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B. Governmental Clearance Process

Government Code Section 54222 requires that a local agency proposing to dispose of surplus property must first notify all governmental agencies operating within the City as to the availability of the property. The agencies are given 60 days to respond with an intent to acquire, if not, the property may be deemed cleared for public sale.

Regarding the list of properties for sale:

- Governmental agencies are regularly contacted as the surplus list is updated.
- City departments, Park & Recreation, Fire, Police, Libraries, MWW, Planning, Engineering and Capital Projects and Water are individually contacted as the surplus list is updated.
- Council offices are given a preliminary review to allow council staff to comment on foreseeable uses for the property.

C. Approval Process

- City-owned properties that have been identified by the Mayor as candidates for sale will be presented to Council for approval to be sold. If a property is of a type and location that would make a ground lease feasible, an economic analysis of the benefits of lease vs. sale will be conducted.
- If Council determines that the property may be sold, it shall authorize the Mayor to sell the property for a price equal to or greater than a minimum price established by a current (less than six month old) appraisal. The authorization to sell the property will be valid for twelve months from the date of Council action.
- The Mayor or his designee may enter into purchase and sale agreements, close escrows and execute and deliver grant deeds to the purchasers of the properties at prices equal to or greater than the minimum price approved by Council at terms and conditions deemed reasonable, and in the City's best interests, by the Mayor or his designee.
- The Mayor will report out on the price, terms and conditions of all transactions.

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- Properties that cannot be sold at a price equal to or greater than the minimum price approved by Council will be returned to Council for further consideration prior to their disposition. Council approval will be required to sell a property at a price less than the minimum price previously approved by Council.

D. Method of Sale

Properties may be sold by any method allowed by Council Policy and Municipal Code. This includes direct negotiation, request for proposal, listing with a broker, sealed bid, auction or other appropriate method as determined by the Mayor. Possible method of sale for all properties will be included in the enabling resolution authorizing their sales.

E. Marketing

Properties offered for sale shall receive the widest possible exposure to the open market place. This may be accomplished through direct marketing techniques, such as requests for proposals (RFPs), advertising, exposure through the real estate media, posting the property on the multiple listing service or any other appropriate method. When appropriate, properties may be listed for sale with qualified real estate brokers. The authorization to utilize the services of a real estate broker will be contained in the enabling resolution.

F. Real Estate Brokers

Real estate brokers may be used to represent the City in the sale of its properties. Brokers will be selected for individual assignments through Requests for Proposals (RFP) or Requests for Qualifications (RFQ) and a subsequent bid or other methods that result in the City receiving the services of a qualified broker at the best value to the City. The maximum approved commission rate will be contained in the enabling resolution for the property's sale. If the property is listed with a broker, the City reserves the right to exclude from the listing agreement potential buyers whose interest in purchasing a subject property has been made a part of the record prior to the execution of such agreement. All brokerage participation and brokerage fees shall comply with Municipal Code Section 22.0905, Broker's Fee and Registration.

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G. Exclusively Negotiated Sales

It will be the City's policy to insure the highest price for its real estate by pursuing open market transactions. However, on certain occasions, an exclusively negotiated sale may be justified. Negotiated transactions shall comply with the requirements of Municipal Code Sections, as applicable, and may be approved under one of the following conditions:

1. When a parcel is landlocked.
2. When the sale to a contiguous owner would correct a site deficiency.
3. When a fee interest in a pipeline or other right-of-way is no longer required, it may be sold to a contiguous owner. A restrictive pipeline easement of adequate width or other required easements will be reserved from said sale.
4. When other governmental, public and quasi-public agencies submit acquisition proposals, a sale may be consummated per Municipal Code Section 22.0907, Sales of Real Properties to Public Agencies. These agencies shall include but not be limited to: Federal, State, and County agencies; school districts, special districts, and regulated utility companies.
5. When qualified nonprofit institutional organizations offer to purchase City-owned land, a negotiated sale may be consummated at fair market value providing there is 1) a development commitment, and 2) a right to repurchase or a reversion upon a condition subsequent. Institutional organizations such as churches, hospitals, extended care facilities, private schools and community service organizations are required to develop under the City's conditional use permit procedure.
6. When a property has been offered by public auction and no acceptable bids were received, it may be sold on a negotiated basis to any applicant submitting an acceptable offer within six months following the date of auction.
7. Real property exchanges may be consummated by direct negotiation per Municipal Code Section 22.0904, Exchanges of Real Property. However, exchanges will be considered only with other governmental agencies or when there is an advantage to the City.

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H. Rezoning

Prior to completion of the sales transaction, City land shall be considered for rezoning in accordance with the General Plan, existing community plans or other City Council direction if a higher sale price will result. Also, all unnecessary easements affecting title to the property shall be removed if this will result in a commensurate increase in value.

I. Easements

The City will receive current fair market value for the removal of restrictive easements or access rights previously paid for by the City or other governmental agency or reserved in a sale of City property.

J. Priority Handling

Since time is of essence in land transactions, all such actions by Council and Committee shall be given the highest priority and special handling. Such action which must first go before a Council Committee will be placed on an early portion of the Committee agenda in order to assure prompt action. Subsequent to the Committee action, the item shall be placed on the docket of the next regular City Council meeting as a Supplemental Item.

K. Public Utilities Installed by Private Entities

The applicant for the use of unimproved City land for public purposes, such as streets, sewers, and other public utilities, shall compensate the City for the fair market value of the rights to be granted by the City. The amount of compensation shall be established by appraisal. However, lands which have been conveyed to the City after July 18, 1983, by private entities shall at the option of the grantor carry a reservation to the grantor for a period of 10 years following the date of conveyance to the City which would permit the grantor to install public utilities serving the grantor's adjacent land without the payment of compensation to the City therefore, and provided further that such installations shall not adversely affect any prospective use of the City's property. Persons who grant property to the City without charge shall have an automatic right to have such public service easements set aside on the donated property in the above manner.

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LEASING OF CITY-OWNED REAL PROPERTY

The City of San Diego has a very diverse real estate portfolio. While the policies below are to act as the standard that governs most leases, the City acknowledges that parts of its leasing portfolio, such as Balboa Park, Mission Bay Park, Non-Profit organizations, Agricultural lands, Airports and Telecommunication Sites have specialized needs or restrictions. In these cases, Council Policy 700-10 will act as a framework for a sub-policy that will govern a specific area. Should a conflict arise between the framework policy and the sub-policy, the sub-policy will govern.

A. Criteria for Leasing

City property shall be considered for leasing when one or more of the following criteria apply:

1. The property is not required for current municipal use, but is to be held for possible future use and can be leased as an interim measure.
2. The property can only be leased because of legal restraints. For example, property held under Tideland trust grants or as dedicated parks.
3. The City requires substantial control over development, use and reuse of the property.
4. 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.
5. The property can be efficiently utilized by a provider of services needed by the City.
6. The property can be leased to promote a substantial economic development opportunity.

B. Portfolio Management Plan

The Mayor may execute lease transactions that meet the terms of the City's asset strategy for a particular property previously approved by City Council in an overall Portfolio Management Plan. Negotiated transactions that fall outside of the parameters of an approved Portfolio Management Plan either will be submitted individually for City Council approval, or deferred until the next periodic update and approval of the plan.

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C. Lessee Selection for New Leases

Competitive offers for lease of City property shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as Request for Proposals (RFPs) – Council Policy 700-41, a marketing subscription system, direct advertising, use of a Multiple Listing Service (MLS), listing with a broker, posting the property and any other appropriate means.

In certain limited situations, the City may exclusively consider a single proposal for lease of City property. Potential lessees wishing to exclusively negotiate with the City must submit for City staff review a business case with sufficient justification as to how it is capable of optimizing the use of the property and return to the City, thereby negating the need for a competitive process. This information will be included when the lease transaction is presented for City Council approval.

Leasehold proposals shall be evaluated in terms of:

1. The degree to which the proposed use is in compliance with the City's strategic plan for the property.
2. In terms of the amount of consideration offered in the form of rent.
3. In terms of the financial feasibility of the proposal.
4. The capability, expertise and experience of the potential lessee with respect to the proposed leasehold development and operation.
5. If new development is proposed, a development plan that includes a description of the development team and its qualifications.
6. The details of each person or entity that will have an interest in the proposed lease to satisfy the requirements of City Charter §225.
7. Special public benefits to be derived (if any).

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D. Rate of Return

The City shall obtain fair market rents for its leases commensurate with the highest and best use of the property. The fair market rent shall be based on an appraisal that complies with the definition of Market Rent found in the Uniform Standards of Professional Appraisal Practice (USPAP) published by the Appraisal Foundation. The appraisal shall be no more than six months old at the time the lease transaction is presented for City Council approval. If the cost of an appraisal is not justified by the anticipated rents, the City may choose an alternative method to establish rent. City leases shall contain terms and conditions which will sustain a fair rate of return throughout the duration of the lease.

E. Rental Terms

Rental terms may be negotiated on the basis of fixed rates (flat rent leases) or percentages of the lessee's gross income derived from business conducted on the property, with a provision for a minimum rental (percentage leases).

F. Percentage Leases

Minimum Rent

The minimum rent component for a new percentage lease shall be set at no less than eighty percent (80%) of the fair market rent as defined above. In certain cases, a portion of the minimum rent may be abated for new construction or redevelopment on the leasehold. The minimum rent shall be adjusted upward throughout the duration of the lease at intervals of not more than every five (5) years to reflect no less than eighty percent (80%) of the average annual rent actually paid or accrued during the three (3) years preceding the adjustment. In no event shall the adjusted minimum rent be less than the minimum rent in existence immediately preceding the adjustment.

Percentage Rates

Percentage leases shall provide for adjustment of percentages rates every ten (10) years to current fair market rates. For the purposes of determining fair market rent percentage rates, the City shall adopt and publish a schedule of benchmark percentage rates that will be updated to current market rates on a periodic basis by appraisal. The appraisal will be guided by prevailing market percentage rates for similar operations primarily within the Southern California area.

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G. Flat Rate Leases

Market Rate Adjustments

Flat rate leases shall provide for upward adjustment of rent every ten (10) years to current fair market rent. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment.

Consumer Price Index Adjustments

Flat rate leases shall provide for upward adjustment of rent in the interval term between market rate adjustments by changes in the consumer price index. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment. The index used for consumer price index adjustments will be the All Urban Consumers index for Los Angeles - Riverside - Orange County, California with a base year of 1982-84. If the U.S. Department of Labor indices are no longer published, another substitute index generally recognized as authoritative will be used. Flat rate leases may include pre-determined periodic increases to rent instead of consumer price index adjustments. These periodic increases would occur at least every five (5) years.

H. Rent Arbitration

Leases shall provide for binding arbitration when the City and lessee cannot agree on the new rent for a rental period under review. The City and lessee shall each select a professional independent real estate appraiser who in turn will select a third independent real estate appraiser to determine the fair market rent. If the two selected appraisers fail to mutually select a third appraiser, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego. If the Superior Court judge declines to make the appointment, then the third appraiser shall be determined in accordance with the rules of the American Arbitration Association. The City and lessee shall pay the cost of its own selected appraiser and equally share the cost of the third appraiser.

I. Appraisal Assumptions

City leases shall include a definition of the fair market value to be used to adjust rent an identification of the premise for that value. In establishing the fair market value of leased property, any appraisal shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of the lease at the commencement of the rental period under review.

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Rates established for purposes of periodic percentage rental adjustments shall not consider any abatement as may be appropriate in a “new” development of vacant land. It shall also be assumed that all required regulatory approvals to permit the use authorized in the lease have been obtained.

J. Lease Term

Short-Term Lease

In accordance with San Diego Municipal Code §22.0901, the Mayor, at all times, shall have power, without advertising, notice, or competitive bidding, and upon such terms as the Mayor may deem proper, to lease any City property for a term of three (3) years or less (short-term lease). The City Council will be notified of a short-term lease not later than fifteen (15) days following its execution. A short-term lease may not be renewed without approval of the City Council. The Mayor may also execute rental agreements covering month-to-month tenant occupancy of City-owned residential housing.

Long-Term Lease

A lease in excess of three (3) years requires a resolution passed by a majority vote of all members of the City Council.

The length of lease term shall be based on the level of capital improvements to be made by the lessee and the economic life expectancy of the development. These factors can be determined utilizing cost estimating and economic life expectancy resources such as tables provided by Marshall Valuation Service. The City may consider other relevant information in determining if a longer lease term is warranted, such as if the proposed leasehold development is expected to generate above average returns to the City or significantly improve the quality of the property.

K. Lease Amendments

Amendments to long-term leases require City Council approval. The City’s agreement to an amendment may be contingent upon updating sections of the lease to incorporate current City standard lease provisions and an adjustment to fair market rent.

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L. Subleases

A lessee may sublease all or part of the leased property to a qualified sub-lessee subject to approval by the City. No sublease shall be approved which would be detrimental to the City's rights under the master lease or for a use that is not consistent with uses allowed by the master lease. The Mayor may authorize subleases which meet these conditions and which do not require amendment of the master lease. Unless special circumstances exist, leases shall provide for the City to receive a minimum of fifty percent (50%) of the incremental gross rental revenues due to the lessee from subleases.

M. Leasehold Financing

The City will not subordinate its fee interest to encumbrances placed against any leasehold by a lessee. The Mayor may approve appropriate financial encumbrances of the leasehold interest, which provide that all loan proceeds are used for authorized improvement of the property until the leasehold is fully developed in accordance with the lease. City staff shall take appropriate steps to review the proposed financing and insure that loan proceeds go into the leasehold. Maximum loan proceeds shall not be in excess of seventy-five percent (75%) loan-to-value, where "value" refers to the leasehold improvements, as determined by a lender's appraisal which has been reviewed and approved by City staff. The loan term shall not exceed the term of the lease.

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 for uses authorized in the lease. After the property is developed, such financing may be permitted so long as there is also substantial benefit to be gained by the City. This may take the form of either a percentage share of the loan proceeds or an upward adjustment to the rent. Either of which shall be based on commercially reasonable comparables found in the market.

N. Leasehold Improvements

Leasehold improvements installed by lessees shall be removed at the lease termination without cost to the City, or will revert to the City, at the City's option. All leasehold improvements and alterations require prior written approval of the Mayor.

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O. Maintenance and Utilities Responsibility

City leases shall require the lessee to maintain all improvements on the property at its own expense and be responsible for the cost of all utilities. Leases for multi-tenanted space shall include specific requirements delineating appropriate responsibilities.

P. Lease Audits

All percentage leases shall be audited by the City Treasurer in the first year of operation to establish proper reporting procedures and at least once every three (3) years thereafter. More frequent audits may be made if appropriate. The City shall reserve the right to audit all other leases and agreements subject to this Council Policy, if determined to be warranted by the City Treasurer.

Q. Leasehold Assignments

Requests for assignment of leasehold interest shall be evaluated on the same basis as the criteria used in evaluating a leasehold proposal. The Mayor may authorize assignments which do not require amendment of the master lease. Consent may be contingent on the payment of additional consideration to the City, either as a percentage share of the purchase price of the leasehold interest or an upward adjustment to the rent. Either of which shall be based on commercially reasonable comparables found in the market. If new financing is involved in the sale, the requirements of 'Leasehold Financing' shall apply.

R. Lease Extensions & Renewals

Requests from existing lessees for lease extensions or renewals may be considered if such proposals promote capital investment and redevelopment of City property. Whenever an existing lessee is seeking renewal of an expiring long-term lease that is not contemplated in a previously approved Portfolio Plan, the Mayor will bring the issue before the applicable City Council Committee with an appropriate recommendation. In addition to the criteria used to assess new lease proposals, City staff also will review the lessee's history with respect to: maintenance of the property; compliance with existing lease terms; prompt rent payments; and a rental return consistent with maximizing the property's full potential.

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The lessee must propose capital investment that: will increase the value or the 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; and is at least ten percent (10%) or more of the value of the existing improvements. It specifically should exclude expenditures to correct deferred maintenance and expenditures for repairs to keep the existing improvements in good condition. The length of any extended lease term shall be calculated by the same method used for calculating the length of new leases.

S. City's Interest in Leasehold Improvements

City lease agreements provide the City the right to assume ownership of the leasehold improvements at the end of the lease. The value of the City's interest in the leasehold improvements can be appraised using widely accepted appraisal methods. In the event the City grants a lessee a lease extension, the City shall be compensated by an amount equal to the change in present value attributable to the deferral of its interest in the leasehold improvements. This amount either can be paid as an upfront payment at the beginning of the extended term or amortized over time with appropriate interest applied. The City shall offset from the value of its interest in the leasehold improvements any increased economic benefit derived from an extended lease. The City shall not receive any compensation for its interest in the leasehold improvements on leases extended prior to the last twenty percent (20%) of the existing term.

T. Security Deposits

The standard security deposit for a new lease agreement shall be equivalent to three (3) month's rent. The security deposit may take the form of cash, an instrument of credit or a faithful performance bond. For a lessee making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

U. Transaction Processing Fees

The City may charge a transaction processing fee in accordance with the schedule of fees adopted pursuant to Administrative Regulation 95.25. The fee may be waived for transactions that provide benefit to the City.

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CROSS REFERENCE:

Council Policy 700-04 - Balboa Park Uses and Occupancy
Council Policy 700-08 - Mission Bay Park Policies
Council Policy 700-12 - Disposition of City Property to Non-Profit Organizations
Council Policy 700-15 - Airport Policy
Council Policy 600-43 - Telecommunication Antennae 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

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SUBJECT: DISPOSITION OF CITY PROPERTY TO NONPROFIT ORGANIZATIONS
POLICY NO.: 700-12
EFFECTIVE DATE: April 8, 1985

BACKGROUND:

It has been the City's practice to lease and to permit the use of City property, both improved and unimproved, by various nonprofit organizations at less than fair market rents for the purpose of providing recreational, educational and cultural enrichment and other services to the citizens and visitors of San Diego. In recent years, the availability of the real estate resources has become increasingly limited due to increased demands for other public uses and the need to sell property to meet growing fiscal obligations. It is, therefore, necessary to reconsider these leasing practices and, also, to determine what the City's position should be, not only as to leases, but, also, as to sales of City property to nonprofit organizations.

PURPOSE:

The purpose of this policy is to establish guidelines for the disposition of City-owned property to nonprofit organizations in areas other than Balboa Park and Mission Bay Park and include specific direction for property which is acquired by the City with Community Development Block Grant (CDBG) funds for the purpose of providing services to economically deprived and blighted areas of the City.

POLICY:

It shall be the policy of the City Council of the City of San Diego to allow direct negotiation with nonprofit organizations for the use of City-owned lands for the purpose of providing the community with cultural, recreational, educational enrichment, and other public services to the citizens and visitors of San Diego. Relative to this policy, the following criteria shall apply:

1. Available City property shall be leased at fair market value to nonprofit organizations when it is deemed by Council that appropriate public benefit will be derived. However, the City may lease property purchased with CDBG funds to organizations that primarily provide services to low-income persons at a nominal fee determined by the City and Agency.
2. The only discount, excepting CDBG purchased property, in the land rental rate which will be considered is that which will be a direct offset to City expenditures. An example would be where the nonprofit organization is constructing and operating a facility to provide a service that would otherwise be a recognized obligation of the City to provide.
3. Prospective lessees shall provide a general development plan and detailed financial statement showing ability to successfully finance the construction and operation of the proposed development.
4. Council approval of a prospective nonprofit organization's use of City-owned land shall be obtained prior to commencement of lease negotiations.

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5. No lease will become effective until firm financial commitments have been obtained under an appropriate lease option arrangement.
6. Lessees will be required to construct, operate, and maintain the premises at their sole cost.
7. Lessees shall be incorporated nonprofit organizations under the laws of the State of California.
8. Development on parklands shall be in conformance with City park development plans, and construction shall comply with City park design criteria.
9. Lessees shall provide desired services and facilities to the general public without discrimination as to race, color, creed, sex, age, or national origin.
10. When leases permit revenue producing activities, some measure of rental compensation shall be paid to the City. However, this provision will not apply to occasional fund raising events provided the funds are used exclusively for the specified purpose(s) of the lease.
11. Property may be sold to nonprofit organizations if deemed appropriate by Council, and then only at fair market value. The single exception to this is in the case of CDBG purchased property, where the City will retain ownership.
12. Properties with significant potential for commercial, industrial, or scientific research uses shall not be available for nonprofit use.
13. Agencies leasing property purchased with CDBG funds may sublease the property only with advance written permission of the City Manager. Subleases will be considered on their individual merits and consistency with conditions placed upon the City by the Federal funding source. Fees generated from subleasing will belong to the City and be deposited with the City Treasurer upon receipt by the Agency.

OTHER INFORMATION:

The following related Council Policies are additional requirements for the use of specific properties, except as otherwise noted. It is not intended that the requirements of these policies be waived by this policy.

Council Policy No. 700-03, Use of City Land by Youth Sports Organizations.

Council Policy No. 700-04, Balboa Park Lease and Rentals.

Council Policy No. 700-09, Leases to Noncommercial Nonprofit Organization and/or clubs in Mission Bay Park.

Short-term leases negotiated in accordance with Council Policy 700-10 are exempt from this policy.

CROSS REFERENCE:

Municipal Code SEC. 22.0901

Council Policy 700-11, Policy on Certain Properties Leased to Non-Commercial Nonprofit Organizations

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Council Policy 700-41, Use of the RFP Process for Lease of City-owned Land Assigned
responsibility - Property Department

HISTORY:

“Lease Negotiation”

Adopted by Resolution R-169955 03/15/1962

Repealed by Resolution R-212957 04/04/1975

“Leases to Nonprofit Organizations

Outside of Balboa Park”

Adopted by Resolution R-251957 06/30/1980

Amended by Resolution R-254651 07/20/1981

Amended by Resolution R-262834 04/08/1985

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SUBJECT: USE OF THE RFP PROCESS FOR LEASE OF CITY-OWNED LAND
POLICY NO.: 700-41
EFFECTIVE DATE: September 8, 1986

BACKGROUND:

The City of San Diego disposes of its real estate holdings through public auction sales, negotiated sales transactions and leasing, in accordance with Council Policy 700-10, Disposition of City-owned Real Property. In many cases, land is made available for development through a competitive process and a Request for Proposal (RFP) is used to advertise the availability of the property and the responses of interested candidates are used to select lessees.

PURPOSE:

It is the purpose of this policy to insure that the use of the RFP process for lease of City-owned land is open, competitive, and consistent with the best interests of the City. It is further intended that the use of the RFP process will be both objective and efficient.

POLICY:

It is the policy of the City of San Diego that the use of the RFP process for the lease of City-owned land shall be as follows:

1. **Utilization**

The request for proposal process will be used in all cases unless an exception is granted by the applicable Council Committee, or the City Council. When particularly complex or sensitive issues are involved, the RFP should be brought to the appropriate Council Committee for review and approval prior to its issuance. Whenever an existing lessee is seeking renewal of an expiring long-term lease, the Manager will bring the issue of renewal, with an appropriate recommendation, to the applicable Council Committee prior to issuance of an RFP. If a determination is made to negotiate renewal of the lease agreement, the consideration will be to improve services and products, and improve the lease terms in accordance with Council Policy 700-10, Disposition of City-owned Real Property.

2. **Advertisement**

RFPs shall be widely advertised to insure maximum exposure of the property and reasonable efforts shall be made to make the local real estate brokerage community aware of the property's availability. For particularly significant opportunities, advertisements shall also be placed in regional and/or national media.

3. **Criteria**

The criteria that will be used for the selection of the purchaser or lessee shall be included in the RFP. Particular emphasis shall be given to making the criteria as objective as possible.

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4. Nominating Committee

The City Manager may establish an advisory committee to assist in formulating a recommendation to the Council, or where it is desirable to obtain expertise not available within the staff. In the selection of persons to participate on the nominating committee, staff shall be careful to insure that no potential conflicts of interest exists. It will generally be sufficient if potential participants are asked to verify that such a situation does not exist.

5. Interviews of Respondents

The City Manager shall determine whether any or all of the respondents are to be interviewed as a part of the selection process.

6. Report

The report transmitting recommendations concerning prospective lessees acquired through the RFP process would normally include the following information:

- a. Background information on the subject property.
- b. A description of the selection process which was used.
- c. The identities of persons who participated on the nominating committee if one was used.
- d. Identification of criteria used in the selection.
- e. Identity of all proposers.
- f. Ranking of the top proposers.
- g. An evaluation matrix to show the overall ranking results, if appropriate.

7. Confidentiality

Prior to issuance of the aforesaid report, all information submitted to the City in a proposal in response to an RFP will be kept confidential throughout the review process (which commences upon receipt of the proposal and ends upon issuance of the Manager's Report). Proposals will generally be required in two parts. Part A will consist of the basic proposal responding to specifics of the RFP. Part B will consist of backup information such as personal financial information, credit reports and other disclosures of a personal or private nature. Upon issuance of the Manager's Report, the basic proposal (Part A) becomes public information and will be made available to the general public for review upon request. However, the proposal's Part B backup information will be treated as confidential on a permanent basis. Evaluation rating data utilized by an evaluation committee will also remain confidential.

REFERENCES:

Council Policy 700-09	Leases to Noncommercial, Nonprofit Organizations in Mission Bay Park.
Council Policy 700-10	Disposition of City-owned Real Property.
Council Policy 700-11	Political Activities on Certain Properties leased to Noncommercial, Nonprofit Organizations.

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HISTORY:

Adopted by Resolution R-251511 03/31/1980

Amended by Resolution R-260743 05/21/1984

Amended by Resolution R-266509 09/08/1986

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SUBJECT: NAMING OF CITY ASSETS

POLICY NO.: 900-20

EFFECTIVE DATE: April 13, 2017

BACKGROUND:

The City, through its departments, and advisory boards and commissions, has followed a number of processes/policies for *naming* or *renaming* its parks, libraries and other *City Assets*. Generally, these policies provide for the *naming* or *renaming* requests based on (1) the location of the *City Asset*, (2) the identity of an individual of historical significance to the local area, or (3) the identity of an individual or entity whose contributions to the City and/or the community supports the request. From time to time, the City has also named *City Assets* after a person or entity who has provided significant financial support for the *City Asset* being named.

The City wishes to replace any existing *naming* or *renaming* policies with one comprehensive citywide policy, as follows:

PURPOSE:

The purpose of this policy is to establish uniform guidelines for *naming* and *renaming* of *City Assets*.

This policy outlines the criteria, conditions, and procedures that govern *naming* and *renaming* of *City Assets* in order to maintain their integrity, to encourage philanthropic giving while acknowledging public investments, and to safeguard against unwanted commercialization of *City Assets*.

This policy does not apply to:

1. Marketing Partnerships entered into under Council Policy 000-40, except that consideration should be given to Guiding Principles, Section C (Funding Criteria) below in regards to them;
2. The *naming* of public streets addressed in Chapter 12, Article 5, Division 11 of the San Diego Municipal Code (SDMC);

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3. Artworks, which are exempt from this Council Policy. Artworks are defined and governed by San Diego Municipal Code 26.0701 et seq.;
4. Public safety-related *City Assets*;
5. Council Policy 100-02 (Donation Acceptance);
6. *Donor Acknowledgement*; and
7. Council Policy 200-10 (Honorary Street Names).

DEFINITIONS

For the purpose of this policy, the following definitions apply:

Board: Board as recognized by the San Diego Municipal Code (SDMC) and/or City Charter.

City Assets: Tangible or intangible items of value that are owned or created by the City, including but not limited to both *City facilities* and leaseholds that do not exceed 35 years and/or that confer ownership rights by agreement. This definition does not include Artworks, which are city assets under San Diego Municipal Code 26.0701 et seq.

City Facility (included in City Assets): Any part of real property or structure owned by the City or for which *naming* rights are conferred by agreement, including, but not limited to parks, libraries, *Recreational Facilities* buildings, parking facilities, interior or ancillary features that are a part of, or within, a larger facility and other City facilities.

City Sponsored or Recognized Support Group: May include, but is not limited to: recreation councils, “friends of” organizations, Community Planning Groups, town councils, or similar entities.

Commission: Commission as recognized by the SDMC and/or City Charter;

Department Director: Appointed director of the department that owns the *City Asset* eligible for *naming* or *renaming*. The director may assign this responsibility to other department staff within their delegation of authority.

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Donation or gift: A monetary (cash) contribution, endowments, personal property, real property, financial securities, equipment, in-kind goods or services, or any other *City Asset* that the City has accepted and for which the *donor* has not received any goods or services in return. For purposes of this Council Policy, the terms “donation” and “gift” shall be synonymous.

Donor: A person or other legal entity that proposes or provides a *donation* to the City.

Donor Acknowledgement: Excluding *naming*, donor acknowledgement is permanent writing on plaques, walls, stone carvings, pavers, bricks, electronic display, or interpretive signs that are temporary or permanent and are used to recognize the financial contribution of a *donor*.

Funding: Financial or in-kind resource to provide funding that might result in *naming* or *renaming*.

Funding Source: The source of *funding* which can include individuals, nonprofit organizations, and for-profit entities.

Naming: The selection and approval by the City for the initial *naming* of a *City Asset* other than streets within the public right of way.

Non-profit Organization: A corporation or an association that conducts business for the benefit of the general public without shareholders and without a profit motive.

Recreational Facility (included in City Assets): Major structures such as community centers, aquatic facilities, picnic shelters/pavilions, athletic courts, and fields.

Renaming: The selection and approval by the City for a new name of an existing *City Asset* other than streets within the public right of way.

Sign Ordinance: The City’s sign regulations contained in SDMC §§ 142.1201 – 142.1292.

POLICY:

The policy of the City is to reserve *naming* or *renaming* of *City Assets* for circumstances that will best serve the City’s interests and ensure a worthy and enduring legacy for the City. To this end, the City supports *naming* or *renaming* requests within the following broad categories:

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1. Location. As a general policy, a name should assist the public in identifying its location. The City shall first consider the name of the community area, the names of nearby geographic features, and the names of adjacent schools and streets when it is considering a *naming/renaming* request.
2. Significant Events, People, and Places. The history of a major event, place, or person may play an important role to preserve and honor a community's history, landmarks, or prominent geographical features. The City may name a *City Asset* for a major event, place, or person of social, cultural or historical significance to the local area when the *City Asset* is associated with or located near the events, people, or places of social, cultural or historical significance. The relationship of the event, person, or place to the *City Asset* must be demonstrated through research and documentation.
3. Outstanding Individuals. This category is designed to acknowledge individuals who have made substantial contributions to benefit the City, local community, park and recreation system, or public library. Naming or renaming a *City Asset* for an outstanding individual is encouraged for those person's whose significance and good reputation have been accepted in the community, City and/or State/National history. If it is not appropriate to name the larger *City Asset* after an individual, then naming or renaming can be subordinate to the name of the larger *City Asset* or the City may name an area or portion of the *City Asset* after an individual, including but not limited to a meeting room, structure, fountain, or garden.

In considering the *naming* or *renaming* of a *City Asset* after an individual, priority will be given to those who made a sustained and lasting contribution to:

- a. The City of San Diego
 - b. The State of California
 - c. The United States of America
4. Major Donations. The City has benefited from the generosity of residents, organizations, and businesses. The significance of *funding* may warrant acknowledging the *funding source* through *naming* or *renaming*.
 - a. The threshold for *naming* or *renaming* a *City Asset* for an individual, organization, or business when *funding* is involved should include a *donation* agreement and one or more of the following:

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- i. A significant contribution towards the capital construction costs of the structure;
 - ii. A deed to the City of land for the majority of the *City Asset* by the *donor*; and/or
 - iii. A twenty-year endowment for the continued maintenance and operations of the *City Asset*.
- b. *Donors* seeking *naming* or *renaming* rights for major *donations* with respect to an individual should use the guidelines for Outstanding Individuals above.

GUIDING PRINCIPLES

A. General Provisions

1. In considering proposals for the *naming* or *renaming* of a *City Asset*, the City will consider whether the proposed name will:
 - a. Engender a strong positive image consistent with the City's goals and values;
 - b. Be appropriate relative to the *City Asset*'s location and/or history;
 - c. Incorporate the assigned historic name if the *City Asset* is a designated historical resource listed on the local, State, or National Register of historic resources;
 - d. Have historical, cultural, or social significance for future generations;
 - e. Commemorate places, people, or events that are of continued importance to the City, community, region, or state;
 - f. Have symbolic value that transcends its ordinary meaning or use and enhances the character and identity of the *City Asset*;
 - g. Have broad public support; and
 - h. Not result in the excessive commercialization of the *City Asset*.

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2. The City will not permit corporate logos, insignias, or advertising slogans in a permanent naming or renaming of a City facility.
 3. A park or library's official documented name should not include the name of a corporation or business. If an organization or foundation's name consists of one or more individuals' names, then the guidelines for Outstanding Individual *naming* should be utilized.
 4. When considering the *naming* or *renaming* of a *City Asset* (excluding official documented names of parks and libraries) that includes a business name, *naming* or *renaming* must be for a defined contractual period of time with regard to the life of the *City Asset*.
 5. All related signage shall comply with the *Sign Ordinance*.
 6. The City shall retain full editorial control over all related signage subject to the *Sign Ordinance* and adhere to the below criteria.
 - a. Any physical form of on-site recognition shall not interfere with visitor use or routine operations.
 - b. The form of any on-site recognition shall:
 - i. Be of appropriate size and color within the design scheme of the facility;
 - ii. Not dominate the sign in terms of scale or color;
 - iii. Not detract from surroundings or any interpretive messages; and
 - iv. Be subject to review and approval by the *Department Director*.
- B. *Funding* Acceptance Criteria. The City may not accept *funding* as part of a *naming* or *renaming* proposal that would create any conflict of interest, as set forth in the City's Ethics Ordinance (Chapter 2, Article 7, Division 35 of the SDMC) and the Fair Political Practices Commission regulations (Title 2 of the California Code of Regulations, sections 18110 – 18997). The following principles form the basis of the City's consideration of *naming* or *renaming* proposals based on *funding* of a *City Asset*:

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1. The mission of a *Funding Source* must not compete, impair or conflict with the policies, goals or operations of the City;
2. The *funding source* must provide a desirable association according to the Guiding Principles under this Policy; and
3. *Naming* or *renaming* rights offered are commensurate with the relative value of the *funding*.

PROCEDURES

A. *Naming* or *Renaming* Application Process

1. Applicants and proposers (including *City Sponsored* and/or *City Recognized Support Groups*) shall submit their *naming* or *renaming* proposal to the *Department Director* depending on asset type.
2. If applicant's proposal follows the intent of this Council Policy, the *Department Director* shall make a proposal in writing for *naming* or *renaming* of a *City Asset* as follows:
 - a. For library facilities, the *Department Director* will make the proposal to the Board of Library Commissioners.
 - b. For parks and *recreational facilities*, the *Department Director* will make the proposal to the Park and Recreation Board.
 - c. For other *City Assets*, the *Department Director* will make the proposal to the appropriate Deputy Chief Operating Officer for the City Facility for which the *naming* or *renaming* is proposed.
 - d. Other City staff may review and provide input on the proposal for *naming* or *renaming*.
3. Written proposals must, at a minimum, include the following information:
 - a. The proposed name;
 - b. Reasons for the proposed name, including a discussion of the criteria identified in this policy;

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- c. The amount of the *donation* or *funding* provided for the *City Asset*, if applicable;
- d. Written documentation outlining community support for the proposed name; and
- e. If proposing to *rename* a *City Asset*, justification for changing an established name.

B. *Naming and Renaming* Review Process

1. Upon receipt of a *naming* or *renaming* proposal for any *City Asset*, the *Department Director* reviewing the *naming* or *renaming* proposal shall consider the following items in the review, including but not limited to, the following:
 - a. Submit the proposal to appropriate City historical staff to review the California Historic Resources Inventory Database (CHRID) to determine if the *City Asset* is a Designated Historical Resources with an assigned historic name;
 - b. Ensure that supporting information has been authenticated;
 - c. If the *City Asset* is a Designated Historical resource listed on the local, State or National Register of Historic Places, any on-site recognition shall comply with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties and shall be reviewed and approved by the City's Historical Resources staff according to those standards;
 - d. Ensure compliance with Charter section 225 (Mandatory Disclosure of Business Interests);
 - e. Consider the impact of the *naming* or *renaming* to the community; and
 - f. Consider the cost of implementation and signage, and identify the *funding* to cover such costs.
2. The *Department Director* will submit the proposal to the City Attorney's Office for legal review of the following issues that include, but are not limited to:
 - a. Ownership rights, by agreement or by law; and

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- b. Adherence to City policies, such as the San Diego Charter and SDMC, as well as any local, state, or federal regulation.
3. For all *City Assets* other than a library or park that do not involve *funding*, the *Department Director* will submit a recommendation to the Assistant Chief Operating Officer, Chief Financial Officer, or Deputy Chief Operating Officer as appropriate for review. The *Department Director* will submit the proposal for final approval of *naming* or *renaming* to the Chief Operating Officer. Prior to approval, City staff will notify the applicable Council District(s) and publish a notice with 30 days for comments by the public that will be taken into consideration by the Department Director following the process outlined herein.

If a *naming* or *renaming* request is for a library or park and does not involve *funding*, then the *Department Director* will advise the applicable board or commission who will invite comments from relevant community groups or associations.

- C. The City, in its sole discretion, may:
 1. Reject *naming* or *renaming* proposals or remove existing *naming* that portray or include depictions, words, or phrases that the City reasonably deems to be harmful, controversial or otherwise do not support the guiding principles stated in this policy; and
 2. Reserve the right to rename any *City Asset* for any reason, for instance if the resident, organization, or business for which it is named turns out to be disreputable, becomes disreputable or does not otherwise support the Guiding Principles set forth in this Policy.

FUNDRAISING GUIDELINES

From time to time, the City may receive offers for outside support groups to identify donors to fundraise for specific *City Assets* in exchange for *naming* rights. *City Sponsored or Recognized Support Groups* intending to fundraise (excluding *Donor Acknowledgement* programs) for multiple *naming* rights or major projects must take the following steps:

1. Develop recommendations for *naming* opportunities with gift levels prior to receiving gifts and offering *naming* rights to prospective donors.

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2. Draft and submit recommended *naming* opportunities with gift levels to the *Department Director* for review.
3. Upon receipt of recommended naming opportunities with gift levels, the *Department Director* reviewing the *recommendation* will consider the following items in the review, including, but not limited to, the following:
 - a. Submit the request to appropriate City historical staff to review the City's CHRID to determine if the *City Asset* is a Designated Historical Resource with an assigned historic name;
 - b. Ensure that supporting information has been authenticated;
 - c. If the *City Asset* is a Designated Historical Resource listed on the local, State or National Register of Historic Places, any on-site recognition shall comply with the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties and shall be reviewed and approved by the City's Historical Resources staff according to those standards;
 - d. Ensure compliance with Charter section 225 (Mandatory Disclosure of Business Interests);
 - e. Consider the community impact;
 - f. Consider the impact of the *donation* or *funding* to the completion of a project, if applicable; and
 - g. Consider the cost of implementation and signage, and identify the *funding* to cover such costs.
4. The *Department Director* will submit the proposal to the City Attorney's Office for legal review of the following issues that include, but are not limited to:
 - a. Ownership rights, by agreement or by law; and
 - b. Adherence to City policies, such as the San Diego Charter and SDMC, as well as any local, state, or federal regulation.
5. Upon completion of the above steps, the *Department Director* will work with the City Attorney to prepare a draft agreement with the *City Sponsored or Recognized Support Group*.

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6. Upon approval by the *Department Director*, the *City Sponsored or Recognized Support Group* will submit the recommended *naming* or *renaming* opportunities with gift levels and draft agreement to the corresponding board or commission.
7. Upon approval by the board or commission, the *Department Director* will submit the final draft recommendation on the *naming* or *renaming* opportunities with gift levels along with the draft agreement to the City Council for final approval. Only after City Council approval may the *City Sponsored or Recognized Support Groups* begin soliciting and accepting donations for *naming* or *renaming* rights.
8. No final commitment to name a *City Asset* or portion thereof shall be made to a potential donor without the final approval by the *Department Director* and Assistant Chief Operating Officer or Chief Operating Officer. *Naming* or *renaming* rights that include *funding* will have final approval by City Council.

HISTORY:

“Naming of City Assets”

Adopted by Resolution R-311043 – 04/13/2017

SAN DIEGO CONTINUES TO LOSE MONEY ON STADIUM MANAGEMENT

SUMMARY

The City of San Diego's Stadium was leased to the Chargers as the primary tenant from 1967 until January 12, 2017, when the Chargers announced their intention to move to Los Angeles. The San Diego State University Aztecs football team's Stadium lease expires in December 2018, at which time the City plans to close the Stadium. The Holiday Bowl, administered by the San Diego Bowl Game Association (Bowl Association), has one more event in December 2018. The Stadium is managed by the City's Real Estate Assets Division (READ), with Stadium Staff administering contracts and handling day-to-day operations. In 1997, the City sold the Stadium naming rights to Qualcomm Inc. The Qualcomm agreement expired in May 2017.

The City's historic loss of revenue at the Stadium was a bone of contention for the City Council for many years. City Council members looked forward to recouping that income under a "Chargers leave" scenario. Yet when the Chargers did leave, the City began exclusive (sole-source) negotiations with Fox Sports College Properties (Fox Sports), a Division of National Advertising Partners¹ to sell Stadium advertising and with the Bowl Association to sell the skyboxes and other luxury suites. When it became clear Qualcomm Inc. would not renew its naming rights, READ added the task of issuing a Request for Proposals (RFP) for those rights to the Fox Sports agreement. Those sole-source contracts were signed in September 2017.

The 2017/2018 San Diego County Grand Jury (Grand Jury) found that these contracts did not meet the San Diego Municipal Code requirements for sole-source procurements. Further, the Grand Jury found Stadium staff had the knowledge and experience to issue the RFP for the naming rights, and to sell the Stadium advertising and suites, which would have brought more revenue to the City. Finally, the Grand Jury found the City lacks policies and procedures on:

- Contracting with private parties for issuance of an RFP on the City's behalf,
- Defining the circumstances in which private parties who issue an RFP on the City's behalf may help judge the responses to that RFP,
- Valuing revenue-generating contracts covering a range of potential products and/or services, and
- Selling the naming rights for City assets like the Stadium.

The Grand Jury recommends the San Diego Mayor and City Council adopt policies and procedures that regulate these situations.

INTRODUCTION

The Grand Jury learned of the City's 2017 agreements with Fox Sports College Properties and the San Diego Bowl Game Association. Wanting to learn why the City, with a continuing loss of stadium revenue, had contracted out these functions, the Grand Jury decided to investigate.

¹ Fox Sports College Properties is a separate entity from Fox Sports San Diego, which is a regional affiliate of Fox Sports Networks and is a joint venture between Fox Cable Networks, a unit of the Fox Entertainment Group division of 21st Century Fox (which owns a controlling 80%) and the San Diego Padres (which owns the remaining 20%).

PROCEDURE

The Grand Jury interviewed representatives of City government and reviewed the following:

- City Policies and Procedures regarding Stadium management and renaming
- City Policies and Procedures on contracting
- Recordings of City Council and Council Committee meetings regarding the Stadium
- Contracts/agreements for Stadium use
- Minutes of the Stadium Advisory Board meetings
- Stadium budget documents
- Audit reports on the Stadium and its revenues

DISCUSSION

Stadium History

The City of San Diego built the stadium and hosted the first San Diego Chargers football game in 1967. The Chargers announced on January 12, 2017, that they were moving to Los Angeles. Their Stadium occupancy agreement expired July 31, 2017. The San Diego State University (SDSU) Aztecs football team began playing its home games at the Stadium in 1967 with its current Stadium lease expiring after its last regular home game of the 2018 college football season. The Padres played at the Stadium from 1969 to 2004, and the Sockers from 1978 to 1983. It is the only stadium to host the Super Bowl and the World Series in the same year (1998). It has hosted other Super Bowl and World Series games as well as national championships, the Holiday and Poinsettia Bowls, international soccer matches, concerts, conventions, monster truck and moto-cross events, parking lot vehicle sales, etc. During the 2003 and 2007 wildfires, the Stadium served as the primary evacuation center. The City currently plans to close the Stadium at the end of December 2018.²

In 1980, voters approved naming the Stadium after Jack Murphy, the late sports writer who had convinced the Los Angeles Chargers' owner to move the team to San Diego. For the 1997 Stadium expansion, Qualcomm Inc. paid the City \$18 million to finish the remodeling and for the naming rights. The Qualcomm Stadium naming rights expired in May 2017. In September 2017, San Diego County Credit Union (SDCCU) bought the naming rights through December 2018.

The City of San Diego owns and operates the Stadium; it is managed by the city's Real Estate Assets Department (READ). At the beginning of 2017, the facility had 37 full-time employees. The Stadium manager reports to the READ director. Stadium staff is responsible for marketing the Stadium, booking events, administering contracts (e.g., for parking and concessions), and maintaining the facility.

The City Council established a nine-member Stadium Advisory Board (SAB) in 1998. The Board serves as liaison between the public, stadium tenants, contractors, and the City and is

² There has been discussion of leaving the Stadium open until the Aztecs find another venue for football, but no decisions have been made. The fate of two November 2018 ballot measures – "Soccer City" and "SDSU West", will undoubtedly influence that decision.

supposed to provide recommendations to the Mayor and City Council on actions requiring Council approval, such as leases and renaming.

In 1978, the Holiday Bowl was launched in San Diego. Local business people formed the non-profit San Diego Bowl Game Association (Bowl Association) to promote the game and related events (e.g., a golf tournament). Over the years, the Holiday Bowl has had several title sponsors (e.g., the National Funding Holiday Bowl in 2015 and 2016). In early 2017, SDCCU bought the title sponsorship. Also in 2017, the City contracted with the Bowl Association to sell the luxury suites for all Stadium events.

The City Has Traditionally Lost Money on the Stadium

The Stadium historically has not generated enough revenue to cover operations and maintenance (O&M). The deficit is made up primarily through a transfer from the Transient Occupancy Tax Fund. The Chargers paid a minimum annual rent (\$3 million a year from 2014 to 2016, with \$4 million a year scheduled to begin in 2017). However, decades of re-negotiated use agreements and legal settlements gave the Chargers all or part of advertising, ticket, suite, concession, and parking receipts, as well as other rent credits. As a result, the Chargers profited further from use of the stadium. In FY 2016 (the last budget cycle before the Chargers left), the Transit Occupancy Tax had to contribute \$11.6 million to cover the deficit. Beyond annual expenses, the 50-year old Stadium is estimated to have deferred maintenance needs totaling around \$80 million.

During the Chargers tenancy, the City's revenue losses on Stadium operations became an issue for the City Council. So when the Council approved the Aztecs new lease in 2009, Council members asked the READ director whether the City would regain control of revenue from Stadium advertising, suite and ticket sales, etc. under a "Chargers leave" scenario. The then-READ director assured them the City would be able to recover those revenues.

The 2017 Stadium Contracts

On January 12, 2017, the Chargers notified the City they would terminate their lease and would vacate the stadium by July 31, 2017. Thus the Chargers' contract rights to advertising and suite sales would revert to the City at that time. In April 2017, READ informed the SAB that "A meeting will be held with San Diego State and the Bowl Association to discuss newfound opportunities with selling the advertising panel and suite sales that previously belonged to the Chargers."

Table 1. – Stadium contracts timeline

DATE	EVENT
1/12/2017	Chargers announce they are moving to Los Angeles. The right to sell Stadium advertising and suites reverts to City
4/13/2017	City Council adopts Policy 900-20, Naming of City Assets, but Policy doesn't apply to Stadium, Sports Arena, or Ballpark
5/7/2017	Qualcomm Inc.'s Stadium naming rights expire
5/11/2017	READ tells SAB that Qualcomm Inc. will not renew its naming rights and that "an RFP will be sent out"
7/2017	Bowl Association begins selling Stadium suites
7/13/2017	READ informs SAB: <ul style="list-style-type: none"> • City hired the Bowl Association to sell suites • City hired Fox Sports to sell advertising signs • Fox Sports will also pursue the naming rights on behalf of the City
8/1/2017	Fox Sports issues Request for Proposals for Stadium naming rights
8/16/2017	City Attorney advises READ and the Department of Purchasing and Contracting (P&C) that the Fox Sports and Bowl Association agreements will require a competitive process, not sole-source
9/1/2017	Responses to the naming rights RFP are due to Fox Sports at its offices at the Aztec Athletic Foundation
9/14/2017	Effective date of sole-source contract between City and Bowl Association regarding sale of Stadium suites
9/15/2017	Effective date of sole-source contract between City and Fox Sports regarding Stadium renaming and advertising
9/19/2017	City Council adopts Resolution 2018-98 renaming the Stadium "SDCCU Stadium"

Coincidentally, Qualcomm Inc.'s 1997 Stadium-naming contract expired in May 2017. That contract did not give Qualcomm rights to extend the naming and did not restrict the City's right to negotiate a new naming sponsor.³ Therefore, the City had the right to seek a new naming partner at the beginning of May 2017 when over 500 events were scheduled in the Stadium or its parking lot through the end of 2018. These included the Aztecs 2017 and 2018 home football

³ As early as March 2015, Qualcomm executives had informed City officials that the company would not invest any more money in San Diego because they did not believe the City had treated them well in return for their past investments (e.g., the \$18 million for Stadium renovations and naming).

schedule (beginning with its 2017 season-opener September 2, 2017), and U2 and Coldplay concerts (on September 22 and October 8, 2017 respectively), plus soccer games, car sales, etc. These known events were the basis for valuing the naming rights.

The City Council adopted Policy 900-20, Naming of City Assets, on April 13, 2017. At the Council hearing on the draft policy, READ clarified that it did not apply to the Stadium, Sports Arena, or Ballpark because those assets typically are leased to a primary tenant, and the naming rights go with the lease. In addition, Policy 900-20 doesn't discuss requesting bids for naming rights, and there is no requirement for Council review of the underlying contract if it is for less than \$3 million. It is awkward to have a class of city assets excluded from a Council Policy on naming those assets but still required to request Council approval of the naming itself. The Mayor and City Council should either amend Policy 900-20 to capture the naming of assets leased to private parties and the contractual procedures to be followed in selling naming rights, or establish a new policy related solely to leased assets like the Stadium.

The Naming Rights and Advertising

In May 2017 the Stadium manager told the SAB that a Request for Proposal (RFP) for purchase of the naming rights "would be sent out." No one consulted the SAB even though renaming the Stadium is an action requiring Council approval. No RFP was prepared by any City agency. Instead, READ negotiated a sole-source contract with Fox Sports to issue that RFP. That contract became effective September 15, 2017, when signed by the city attorney.

On August 1, 2017, Fox Sports published a "Request for Proposal Naming Rights for the Stadium." This RFP called for responses to be delivered to Fox Sports at its Aztec Athletic Foundation address. It specified that the City and Fox Sports would jointly evaluate the proposals and make the selection. Fox was to receive 25% of the naming-rights revenue.

The City does not usually contract out the issuance of an RFP, and it has no rules covering such a contract. The City's standard for issuing an RFP is 60 to 100 days. If the City had developed an RFP for the naming rights beginning in April or May 2017, it could have been issued and the bids received on roughly the same schedule as that followed by Fox Sports, with the City retaining all of the naming rights revenue. Nor are there City rules about a private party issuing such an RFP and assisting in the judging of the responses. The Grand Jury recommends the City adopt rules governing the issuance and judging of RFPs by third parties.

READ presented the request to rename the Stadium to the City Council on September 19, 2017. In the normal course of business, that request would have been heard first by a Council committee, allowing time for the members and the Independent Budget Analyst (IBA) to undertake a critical review of issues before a final vote. As this process can take up to four months, time-sensitive requests for Council action can be expedited through a Supplemental Docketing Request. READ used the Supplemental Docketing process and thus the September 19, 2017 Council meeting was the first notice Council members and the IBA had that READ had contracted with Fox Sports to issue an RFP for the naming rights and to help judge responses to that RFP. As a result, the issues the IBA and Council members raised at that hearing about Fox Sports' role in awarding the naming rights were not discussed in detail, nor were they pursued further.

READ has argued that it could not issue that RFP because the City did not have the expertise to value the naming rights, while Fox Sports is familiar with that market. However, the Stadium staff belongs to professional organizations such as the International Association of Venue Managers and the Stadium Managers Association, and routinely communicates with other stadiums to compare business strategies and gather up-to-date market information. Even without these professional connections, a simple Internet search provides numerous hits on the value of stadium and arena naming rights. Staff could have drawn on these sources of information to determine where the RFP should be publicized and which bids were reasonable. It also may be argued that there was no established market value for the naming rights for a 50-year old decaying stadium with no professional sports anchor tenant. It was a unique item in the American sports world, and Fox Sports' market familiarity did not offer anything beyond the City's own resources.

READ also told the City Council that the City had no experience selling advertising, thus it was necessary to contract with Fox Sports for all Stadium advertising. However, Stadium staff knew from the Chargers' accounts who the advertisers had been and how much each ad was worth. Indeed, the Stadium advertising "Inventory" (a complete list of advertising locations in and around the Stadium and their prices) is appended to the Fox Sports Agreement as Exhibit A (see Table 2).

Table 2. – Stadium Signage Inventory

Location	Value	Available	Notes
Fascia Panels	\$75,000	8	
Parking Lot Pole Signs	\$25,000	4	4 parking lot areas available
Trivision North Full	\$60,000	3	
Trivision South Full	\$60,000	3	
West Video Board Permanent Signage	\$30,000	4	
East Video Board Permanent Signage/lower	\$50,000	2	
East Video Board Permanent Signage/top	\$80,000	1	One 14' x 50' backlit ad panel
East Video Board Permanent Signage (small)	\$20,000	2	
External Trivision	\$100,000	2	
Street Signs (Friars Road)	\$25,000	1	
Concourse Escalator	\$15,000	6	Three 20' x 5' banners on escalators in main concourse
Pedestrian Ramp	\$10,000	6	
Ticket Office/Gate C & E	\$10,000	8	
Friars Road Marquee/Primary	\$50,000	1	
Friars Road Marquee/Secondary	\$30,000	1	
Murphy's Lounge	\$25,000	1	
West Tunnel Team Entrance	\$25,000	1	
Elevator Tower	\$20,000	2	
Elevator Doors	\$5,000	10	
Restrooms	\$500	40	
Game Clocks	\$3,333	3	
Custom Branded Concessions Site	\$20,000	3	
East Concourse Concessions	\$15,000	1	

Again, READ did not seek the SAB's advice about contracting out advertising sales, but negotiated a sole-source contract with Fox Sports as the City's exclusive sales representative for "any and all available multi-media and in-venue marketing, advertising, promotional, naming

and/or sponsorship opportunities” related to the Stadium. In that Agreement, Fox retains 25% of all net advertising revenue up to \$1.5 million, and 30% of advertising revenue over \$1.5 million. The Fox Sports agreement became effective September 15, 2017, when the City Attorney signed the contract.

The Suite Sales

The Stadium has a variety of luxury suites and press boxes. In the past, the City leased most of them to the Chargers Associates, who “sold” the suites for most Stadium events. When the Chargers terminated their agreement with the City, the right to sell those suites reverted to the City. Stadium staff is familiar with the suites, their size and location, and their past revenue streams to Chargers Associates. Indeed, by February 2017, Stadium staff was in contact with existing suite “owners” to see if they wanted to keep their suites. Stadium staff could have begun selling suites for all Stadium events at that time, retaining most of the revenue and thus offsetting a larger share of the suites’ O&M costs than was possible under the Chargers’ Agreement.

Instead, on August 18, 2017, READ submitted a request for sole-source procurement to the City Department of Purchasing & Contracting (P&C) to award a non-competitive contract to the Bowl Association “to sell all suites for all events held inside the Stadium.” The justifications for using a sole source were the short time available before the Aztecs’ first game on September 2, 2017, and the contractual relationship the City already had with the Bowl Association for the Holiday Bowl.

READ’s agreement with the Bowl Association for suite sales was effective September 14, 2017 (although suites sales began in July 2017). Under that agreement, the City gets 40% of suite-sale revenue, the Bowl Association 30%, and the event sponsor 30%. In addition, the Bowl Association gets 5% of the City’s share of Stadium signage revenue from the Fox Sports contract. From July to December 2017, the City received a total of \$152, 989.35 from its 40% share of suite sales. However, the Bowl Association’s monthly income statements are so poorly prepared the Grand Jury was unable to verify the accuracy of this number. The City should require the Bowl Association to use standard government accounting practices in their monthly and annual reports.

The Sole Source Process

The Grand Jury finds that the sole-source process was not justified in negotiating either the Fox Sports or the Bowl Association agreements.

Municipal Code §22.3003 defines the City’s agreements with Fox Sports and the Bowl Association as contracts for services. READ and P&C assumed that a competitive process was not required for either of these contracts because they are revenue-generating, a process through which Fox Sports and the Bowl Association would each collect the revenue, retain their share, and send the remainder to the City, rather than be paid by invoice. The city attorney disagreed, and on August 16, 2017 advised READ and P&C that the competitive process under MC §22.3203 was triggered because the contracts were worth more than \$25,000 each. Table 3 shows the number of quotes required for different contract values.

Table 3. – Competitive contract Solicitation Requirements

Value of Goods/Services Contractor Will Provide	Number of Quotes Needed
Up to \$25,000	1 quote
\$25,000.01 to \$50,000	2 quotes
\$50,000.01 to \$149,999.99	5 quotes
\$150,000 or more	Formal solicitation (RFP)

The total value of these contracts is difficult to estimate because it is unknown which suites and advertising panels might be sold for Stadium events. The City does not have rules on valuing revenue-generating contracts, and the Grand Jury recommends they develop some.

Under the provisions of MC §22.3208 relevant to this analysis, the only contracts that are *not* required to be competitively awarded are those for less than \$25,000 or necessary to safeguard life, health, or property in an emergency. The City Procurement Manual is based on MC §22.3208 and states that justifications for a sole-source contract also can include continued work on an existing project or system, an exclusive supplier, legacy systems, and operational impact. The Manual goes on to provide:

“Requests for Sole Sources submitted to P&C with invalid justifications include the following. These justifications will not be approved:

1. Poor planning – ‘We did not have time to go out to bid’;
2. Preference – ‘We like the current provider and do not want to switch’; or
3. Past practices – ‘P&C approved this two years ago, why can’t they approve it now?’”

When a City official requests a sole-source procurement, MC §22.3016 requires that the P&C director certify that it is necessary by showing why a competitive process would be unproductive or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible.

On August 18, 2017, the READ director submitted a sole-source request for the Fox Sports and Bowl Association contracts. The justifications offered for both requests were, first, insufficient time to undergo a competitive process and still capture the value of Stadium events scheduled in September and October of 2017, and second, the City’s existing contractual relationships with Fox Sports and the Bowl Association. P&C approved the sole-source requests on September 6, 2017.

The Grand Jury does not believe these justifications are sufficient to support use of the sole-source procedure. First, there was no emergency requiring the City to safeguard life, health, or property as required by MC §22.3208(b). Second, the certifications did not describe why strict compliance with a competitive process would be unproductive or would not produce an advantage as required by MC §22.3016(a). Third, the certifications relied on the short time before the Aztecs season began and the U2 and Coldplay concerts, but did not explain why the City had been unable to act more quickly when the suites and advertising had reverted to the City in January and the naming rights in May. Fourth, the certifications relied on prior relationships

with Fox Sports and the Bowl Association, but did not explain why those relationships justified a sole-source process. The reasons given for sole-source status do not conform to the requirements of the Municipal Code or the City's Procurement Manual.

FACTS AND FINDINGS

Fact: The City of San Diego owns and manages the Stadium.

Fact: From 1967 to 2017, the Chargers were the Stadium's primary tenant.

Fact: The Chargers' Stadium Use and Occupancy Agreement (with all amendments) gave the team control of Stadium advertising and suite sales.

Fact: On January 12, 2017, the Chargers announced they would be terminating their Stadium Use and Occupancy Agreement.

Finding 01: The Chargers' departure gave the City an opportunity to recoup revenue on Stadium advertising and suite sales.

Fact: In May 2017, READ began a sole-source negotiation with Fox Sports for the sale of Stadium advertising.

Fact: In May 2017, READ began a sole-source negotiation with the Bowl Association to sell the Stadium suites for future events.

Fact: Stadium staff is knowledgeable about the Stadium advertising opportunities and their costs.

Fact: Stadium staff is knowledgeable about the Stadium suites and their costs.

Fact: Stadium staff is well versed in national standards of stadium management.

Finding 02: Stadium staff could have sold the Stadium advertising.

Finding 03: Stadium staff could have sold the suites.

Finding 04: The City gave away revenue it could have retained.

Fact: The City's contract with Fox Sports to issue an RFP for the Stadium naming rights was effective September 15, 2017.

Fact: Fox Sports issued an RFP for the Stadium naming rights on August 1, 2017.

Fact: The RFP responses were due to Fox Sports on September 1, 2017.

Finding 05: The City allowed work on the contract before its effective date.

Fact: The City's contract with the Bowl Association to sell the Stadium suites was effective on September 14, 2017.

Fact: The Bowl Association began selling Stadium suites in July 2017.

Finding 06: The City allowed Stadium suites to be sold before it authorized the sales.

Fact: Qualcomm Inc. bought the Stadium naming rights in 1997.

Fact: Qualcomm Inc.'s naming rights expired in May 2017.

Fact: Qualcomm Inc. did not wish to extend its naming-rights contract.

Fact: The City contracted with Fox Sports for Fox to issue an RFP for the Stadium naming rights.

Fact: The City Procurement Manual specifies RFPs are prepared collaboratively by the client department, the Purchasing & Contracting Department, and the city attorney

Fact: Neither City contracting policies nor the Municipal Code discuss contracts to issue RFPs.

Finding 08: The City needs rules on contracts that allow private parties to issue RFPs on the City's behalf.

Fact: The City's benchmark for issuing RFPs is 60 to 100 days.

Fact: Stadium Staff is familiar with the RFP process through the contracts for parking and concessions.

Finding 09: The City had the time and expertise to issue its own renaming RFP in time for the Stadium events of September 2017.

Fact: The City's contract with Fox Sports provided that Fox would issue an RFP for the Stadium naming rights.

Fact: A Fox Sports representative was on the panel that reviewed the RFP responses and selected the winner.

Fact: The City's contract with Fox Sports gave Fox 25% of the naming-rights revenue.

Fact: The City does not have policies and procedures governing the judging of RFPs by third-parties who have a financial stake in the outcome.

Finding 10: The City needs rules on third parties judging responses to RFPs.

Fact: The contracts with Fox Sports and the Bowl Association are “contracts for services” under MC §22.3003 that require a competitive solicitation under MC §22.3206.

Fact: MC §22.3208 defines a “sole source” contract as one that is not required to be competitively awarded.

Fact: MC §22.3016(a) justifies a sole-source contract when “...strict compliance with a competitive process would be unavailing or would not produce an advantage, and...soliciting bids or proposals would therefore be undesirable, impractical, or impossible.”

Fact: The sole-source certifications for the Fox Sports and Bowl Association contracts are based on the short period of time available to issue RFPs and the prior relationships with Fox Sports and the Bowl Association.

Fact: The City had the opportunity to issue an RFP for advertising and suite sales as early as February 2017.

Fact: The City Procurement Manual provides the official statements of what circumstances justify and what circumstances do not justify sole source contracts.

Finding 11: The Fox Sports and Bowl Association contracts did not conform to the requirements for sole source status.

Fact: The Fox Sports and Bowl Association contracts are revenue-generating.

Fact: The City has no rules on valuing revenue-generating contracts for the purposes of determining the appropriate solicitation process.

Finding 12: The City needs rules on valuing revenue-generating contracts.

RECOMMENDATIONS

The 2017/2018 San Diego County Grand Jury recommends that the Mayor and City Council:

- 18-16:** Establish policies and procedures for City contracts with private parties in which the private party will issue a Request for Proposal on the City’s behalf and include rules on when the private party can participate in judging the responses to that RFP.
- 18-17:** Establish policies and procedures for selling the naming rights for City assets leased to private parties.
- 18-18:** Establish policies and procedures for valuing revenue-generating contracts.
- 18-19:** Require the Bowl Association to follow standard government accounting practices in its monthly and annual income statements.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
Mayor, City of San Diego	18-16 through 18-19	8/21/18
San Diego City Council	18-16 through 18-19	8/21/18