CITY OF SAN DIEGO, CALIFORNIA

COUNCIL POLICY

CURRENT

SUBJECT: DISPOSITION OF CITY-OWNED REAL PROPERTY
POLICY NO.: 700-10
EFFECTIVE DATE: March 1, 2005

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 the individual sites 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 guidance for the auction, negotiated sale, or exchange of City-owned real estate; and 3) to establish policies for the leasing of City-owned real property.to establish the conditions under which City-owned real property may be leased.

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 City Council will review all City-owned real estate not adequately 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.municipal purposes may be so designated. If a property is not needed for public use within the foreseeable future, it may be made available for lease or sale, or if it will be needed at a future time, it may be suitable for lease in the interim. Those properties not required for municipal use or designated for lease may be designated for 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 Councilof the property which is no more than six months old at the time the transaction is presented to the City Council or one of its committees, 2)

prevailing economic conditions and ~~recent applicable~~ market trends, and 3) any special benefits to accrue from the sale or lease. 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 ~~prior to negotiation,~~ setting forth the amount of the discount and the justification for the discount ~~it~~.

~~Since it is generally not in the City's best interest for a property transaction to be negotiated in open session, the City Council shall either approve, disapprove, or return to the City Manager for further negotiation or study, any recommendation regarding the disposition of City property.~~

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.

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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 Enterprise Fund.
- The sale of the property will generate greater economic value than a ground lease

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~~Real Estate Review~~

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~~All unused and marginally used City-owned real estate will be reviewed on a continuing basis to determine public facility needs and General Plan element support needs on a timely basis. The following procedure shall apply:~~

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1. Review by appropriate City departments and other governmental agencies.
2. Review by the Subdivision Review Committee.
3. Review by the Planning Commission for consistency with the General Plan.
4. The City Manager's recommendation and relevant comments are submitted to the Public Facilities and Recreation Committee.
5. Public Facilities and Recreation Committee recommends the designation of the property and any related actions to the Council.
6. The City Council then determines the designation to be applied to the property, i.e., public facility, open space, sale or lease (see Section B.).

B. Governmental Clearance Process

Government Code Section 54222 requires that a local agency proposing to dispose of surplus property 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 is deemed cleared for public sale.

- Governmental agencies are regularly contacted as the surplus list is updated.
- City departments, Park & Recreation, Fire, Police, Libraries, MWWD, are individually contacted as the surplus list is updated.

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Lease Versus Sale

City-owned real property not required for municipal uses will be designated for lease or sale using criteria listed below. At the time staff recommends whether the property should be sold or leased, Council shall be provided with an appropriate analysis of the alternatives.

1. Criteria for Sales. Property shall be sold when:

a. The sale of a property will provide revenues necessary for public facilities which are unfundable through other revenue sources.

b. The property is unleasable because of location, access, topography, or other considerations.

c. The sale would enhance the City's position relative to other activities, such as economic development efforts.

d. The sale would maximize the total economic return to the City.

2. Criteria for Lease. Property shall be leased when:

a. The land can only be leased because of legal restraints, such as tideland grants, airports, dedicated parks, agricultural preserves, open space watershed or floodplains.

~~b. The property is now needed, or may be needed in the future, to provide the City with a site for public facilities, or unusual services not otherwise obtainable.~~

~~c. The property is in an area of uncertain future development and can be leased as an interim measure until future public needs or land use designations can be determined.~~

~~d. The City requires substantial control over development, use and reuse of the property.~~

~~e. 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 lands.~~

~~3. Industrial Properties. Generally, City-owned industrial properties will be used to facilitate increased employment and otherwise enhance the local economy. Sale or lease of such property will be in accordance with Council Policy 900-3, Disposition of City-owned Industrial 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 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 a 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 or 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 transaction.
- Properties that are not 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.

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~~Sale of Real Estate~~

~~1. Auction. City property designated for sale shall generally be offered by public auction unless the parcel meets the criteria for a negotiated transaction as hereinafter set out in 3 below. Public auction sales shall be conducted in accordance with Municipal Code Section 22.0902.1, Sales of Real Property – Requirements for Sale at Auction. City Council reserves the right to reject any and all bids. The minimum acceptable bid will usually be set by qualified staff after considering readily available information. The~~

~~intent of this procedure is to efficiently set a minimum bid which will insure a fair return to the City for its property, while encouraging maximum participation in the bidding process.~~

~~2. Term Payments. The Manager may offer term payment plans on properties to be sold in order to stimulate interest in the property. Term payment plans shall insure that the city obtains an appropriate rate of return on the unpaid balance. The Manager will have the authority to vary the terms and interest rates, as appropriate, to reflect current market conditions or other special needs.~~

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, sealed bid, auction or other appropriate method as determined by the Mayor. The method of sale for all properties will be contained in the resolution authorizing their sale.

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 brokerage services 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 for commission or other methods that result in the City receiving the services of a qualified broker at the lowest possible commission rate. The maximum approved commission rate will be contained in the enabling resolution for the properties sale. All brokerage participation and brokerage fees shall comply with Municipal Code Section 22.0905, Broker's Fee and Registration.

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G~~3.~~ Exclusively Negotiated Sales.

It will be the City's policy to insure that the highest price for its real estate by pursuing open market transaction. However, on certain occasions, an exclusively negotiated my 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:

~~Negotiated transactions shall comply with the requirements of Municipal Code Sections, as applicable, and may be approved under one of the following conditions:~~

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a. When a parcel is landlocked.

b. When the sale to a contiguous owner would correct a site deficiency.

c. 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.

d. 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.

e. 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.

f. 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.

g. Real property exchanges may be consummated by direct negotiation per Municipal Code Section 22.0902.2, Exchanges of Real Property. However, exchanges will be considered only with other governmental agencies or when there is an advantage to the City.

H.~~4.~~ Rezoning.

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Prior to completion of the sales transactions, City land(s) shall be rezoned 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.

I.~~5.~~ Easements.

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The City will receive current fair market value ~~-~~for the removal of restrictive easement(s) 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.

LEASING OF CITY-OWNED REAL PROPERTY

1.~~D.~~ 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 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.

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2. Real Estate Portfolio 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 Plan. Negotiated transactions that fall outside of the parameters of an approved Portfolio Plan either will be submitted individually for City Council approval, or deferred until the next periodic update and approval of the plan.

3. 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, a Multiple Listing Service (MLS), 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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4. 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.

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~~1. Rate of Return. The City shall obtain a fair market rate of return on City-owned property being considered for lease and negotiate terms and conditions which will continue to sustain a fair rate of return through rent review, consumer price index adjustments, reappraisals or the application of percentage rents to gross income. The rate of return shall be based upon the highest rate commensurate with the highest and best use of the property, or a fair rate of return commensurate with the designated public use.~~

5.~~2~~. 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).~~or combinations thereof, whichever is commensurate with the market place~~.

6.~~3~~. Percentage Leases

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i.) 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.

ii.) 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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~~Percentage leases will provide a minimum rent which shall be adjusted at appropriate intervals which shall be no more than every five years to reflect 80 percent of the average annual rent actually paid during the preceding interval. In no event shall the adjusted minimum rent be less than the minimum rent in existences preceding the adjustment~~.

7. Flat Rate Leases

i) 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.

ii) 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.

8. Rent Arbitration

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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.

9. Appraisal Assumptions

City leases shall include a definition of the fair market value to be used to adjust rent and 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. It shall also be assumed that all required regulatory approvals to permit the use authorized in the lease have been obtained.

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10~~4~~. Lease Term

i) 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.

ii) 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

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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.

~~Long-term Lease. A lease in excess of three (3) years requires Council approval by Resolution. However, leases for wireless communication facilities for a term of up to ten (10) years may be executed by the City Manager.~~

~~5. Short-term Lease. Unless there are special circumstances, a lease term of three (3) years or less may be executed by the City Manager without Council Resolution. A short-term lease may not be renewed without Council Resolution. Council will be notified of a short-term lease, not later than 15 days following its execution.~~

11. Lease Amendments

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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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~~6. Selection of Lessee. Leasehold proposals shall be evaluated essentially in terms of:~~

~~a. Consideration offered in the form of rent.~~

~~b. Financial capability.~~

~~c. Expertise regarding the proposed leasehold development and operation.~~

~~d. Nature of proposed development.~~

~~e. Special public benefits to be derived (if any).~~

~~7. 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 City Manager may authorize assignments which do not require amendment of the master lease provisions.~~

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12~~8~~. 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.

Requests for sublease approval will be considered on the merits of each individual transaction. No sublease shall be approved which would be detrimental to the City's rights under the master lease. The City Manager may authorize subleases which meet this condition and which do not require amendment of the master lease. The percentage rental rate shall be a minimum of fifty percent of the gross revenues from subleases for wireless communication facilities.

13. 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. 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.

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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.

14. 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.

15. Maintenance and Utilities Responsibility

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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.

16. Lease Audits

All percentage leases shall be audited by the City Auditor and Comptroller 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, if determined to be warranted by the City Auditor and Comptroller.

17. 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. If new financing is involved in the sale, the requirements of 'Leasehold Financing' shall apply.

18. 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.

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.

19. 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.

20. 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.

21. 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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9. Amendments. Amendments of long-term leases require Council authorization. Whenever there is a substantial amendment, the City Manager shall provide an indication of the fair return for the leasehold. This can be accomplished by appraisals, a survey of the market rate of return, a combination of the above, or any other relevant information.

10. Updating Lease Terms. Lease terms shall be updated as much as practicable whenever there is a request for assignment, or significant amendments or subleases are proposed.

11. Financial Encumbrances. The City will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee. The City Manager may approve appropriate financial encumbrances of the leasehold interest which provide that all loan proceeds are used for authorized improvement of the premises. Loans or refinancing in the form of encumbrances against the lease for the purpose of reducing equity or financing the sale of leasehold interest will not be allowed until the property is fully developed 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. When encumbrances are made against a leasehold for its development, City staff shall take appropriate steps to insure that the proceeds go into the leasehold. It is recognized that the steps will depend upon the circumstances of the case and limitations on staff resources.

12. Improvements. Lease improvements installed by the lessee will be removed at termination without cost to the City, or will revert to the City, at the City's option. All leasehold improvements and alterations require prior approval by the City Manager.

13. Lease Term. Lease term will be limited to the shortest practical time commensurate with the amount of capital investment in permanent improvements to be made by the lessee.

14. Audits. All percentage leases shall be audited by the City Auditor and Comptroller in the first year of operation to establish proper reporting procedures and at least once every three years thereafter. More frequent audits may be made if appropriate. The City shall reserve the right to audit all other leases and agreements if determined warranted by the City Auditor and Comptroller.

15. Site Access Fee for Wireless Communication Facilities. A onetime site access fee shall be charged for all wireless communication facilities except within the City's Right of Way. The base fee for 2004 is Forty Thousand Dollars ($40,000), and shall be increased on January 1 of each year corresponding to consumer price index. Renewal

~~of existing leases or subleases for which a site access fee has not been paid shall be conditioned upon payment of one half of the site access fee.~~

~~E. Marketing.~~
~~Competitive offers for lease or sale shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as requests for proposals (RFPs), a marketing subscription system, direct advertising, exposure through the real estate media, such as the multiple listing service, posting the property and any other appropriate means. Lands designated for industrial and scientific research uses shall be marketed in accordance with Council Policy 900-03.~~

~~F. Real Estate Broker's Fee.~~
~~The City will normally pay a real estate brokerage fee for qualified representation of a selected lessee or purchaser of City property. When the amount of rental or purchase price offered are criteria for selecting a lessee or purchaser in competitive situations, the selection will be based on the highest net rental or net purchase price, taking into account any brokerage fees involved in the competition. All brokerage participation and brokerage fees shall comply with Municipal Code Section 22.0905, Broker's Fee and Registration.~~

~~G. 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.~~

~~H. 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 therefor, 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.~~

CROSS REFERENCE:

Council Policy 700-04
Council Policy 700-09

CURRENT

Council Policy 700-11
Council Policy 700-12
Council Policy 700-41
Council Policy 700-06
Council Policy 600-43
Council Policy 900-03

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