

SUBJECT:
Leasing of City-Owned Real Property

POLICY NUMBER 300-19
ADOPTED 8-19-92
REVISED 11-28-01

The purpose of this City Council Policy is to:

1. Establish guidelines where City-owned real property will be normally leased and to establish the conditions of the lease arrangements; and
2. Provide the conditions for the leasing of City property by a bidding process to achieve a fair market return on the property; and
3. Set minimum standards acceptable to the City related to lease terms and conditions.

It is the City Council's policy to seek fair rental and yet still encourage industry and employment-generating activities which will enhance the diversity and stability of the economic base of the City. Fair rental is defined as that rent which is competitive, if comparable, with the public and private sector for the same or similar land located within the Southern California area, given the City's designated land uses. It is the City's policy to manage its real estate assets so that City needs, which rely on these assets, may be properly implemented. The City Council will review all City real estate not adequately used for City purposes and determine the appropriate use of the property.

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

Since time is of essence in lease transactions, all such actions shall be given the highest priority and special handling. They shall be placed on the executive session agenda of the next regular City Council meeting as a priority item.

This policy shall apply to all property owned by the City of Oceanside.

LEASING PROCEDURES

1. **Bidding** - Competitive offers for lease shall be solicited from the open marketplace. This may be accomplished through a number of marketing techniques, such as requests for proposals (RFPs), direct advertising,

exposure through the real estate media, posting the property and any other appropriate means.

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

- a. 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 lands.
- b. The City requires substantial control over development, use and reuse of the property to enhance the planned development of that particular area.
- c. The land can only be leased because of legal restraints, such as tideland grants, dedicated parks, open space, watershed or floodplain.
- d. To enhance the growth of long-term revenue sources, as opposed to a one-time realization of funds from the sale of the property.
- e. The City has a future use, but no immediate need for the property.

3. **Rate of Return** - The City shall optimize the lease rent price from City-owned real estate based on relevant factors, including:

- a. An economic analysis based on prevailing economic conditions and recent applicable trends;
- b. The use of appropriate lease survey data throughout Southern California, where applicable and when available, in doing a comparable leasing analysis.

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by City Council, setting forth the amount of the discount and the justification for it. This type of lease would normally be with organizations that will provide a significant community service to the City of Oceanside.

4. **Rental Rates** - The City shall obtain a fair market rate of return on City 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. **Lease Types** - Rental rates may be negotiated on the basis of community service, fixed rates, percentages of gross income or combinations thereof, whichever is commensurate with the market place. All terms shall be subject to conditions which assure the annual review and update of a fair rate of return.

- a. Flat Rate Leases

City leases on a flat rental shall normally provide for a rental review at a minimum of every five years thereafter. On flat rental leases there shall be, in addition, adjustments in rent every year (hereinafter "Rent Adjustment") based upon the Consumer Price Index for All Urban Consumers for Los Angeles-Anaheim-Riverside All Items (hereinafter "CPI"). The minimum Rent Adjustment will be a minimum of four percent, a maximum of eight percent, or the annual CPI if this index is greater than four percent and less than eight percent. The Rent Adjustment Index will be based on the prior year of the term of the lease agreement. In no event shall the adjusted rent be less than the rent in existence the year preceding the adjustment.

- b. Percentage Rate Leases

City leases on a percentage rental shall provide for a minimum rent, as well as a percentage rent, whichever is higher. There shall be a minimum rent and a percentage rent review at a minimum of every five years thereafter. Minimum rent for percentage leases shall be set at 100 percent of the gross rent produced during the year preceding. There shall be adjustments to the minimum rent every year (hereinafter "Rent Adjustment") based upon the Consumer Price Index for All Urban Consumers for Los Angeles-Anaheim-Riverside All Items (hereinafter "CPI"). The minimum Rent Adjustment will be a minimum of four percent, a maximum of eight percent, or the annual CPI if this index is greater than four percent and less than eight percent. The Rent Adjustment Index will be based on the prior year of the term of the lease agreement. In no event shall the adjusted minimum rent be less than the minimum rent in existence the year preceding the adjustment.

6. **Selection of Lessee** - Leasehold Proposals shall be evaluated essential in terms of:
- a. Considerations offered in the form of rent or improvements over the entire term of the lease that demonstrates an economically feasible program that will produce the highest return to the City.
 - b. Lessee possesses the financial ability to develop and maintain the site over the term of the lease at its highest level.
 - c. Lessee possesses a high level of expertise regarding the proposed leasehold development and operation.
 - d. Proposals for a development whose appearance and design meets the City's land use and development criteria.
 - e. Special public benefits to be derived (if any).

The City Council shall weigh the relative criteria set out above and award the lease to that prospective tenant who maximizes the composite of all these criteria.

7. **Lease Terms** - Lease terms will be limited to the shortest practical time commensurate with the amount of capital investment in permanent improvements to be made by the lessee.
8. **Updating Lease Terms** - Lease terms and rental amounts shall be updated as much as practicable to obtain a fair market rate of return on the City property being considered whenever there is a request for renewal, assignment, significant amendments or subleases.
9. **Renewal Options** - Renewal options included in the lease may not be exercised automatically by the Lessee. Renewal of these options will require the approval of the City Council.
10. **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 Council may authorize the assignments which do not require amendment of the master lease provisions.
11. **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 Council may authorize subleases which meet this condition and which do not require amendment of the master lease.

12. **Amendments** - Amendments of long-term leases require City 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 comparable market rates, a long-term economic rate of return, a combination of the above, or any other relevant information.
13. **Financial Encumbrances** - The City will generally not subordinate its fee interest to encumbrances placed against the leasehold by the lessee. The City Council may approve appropriate financial encumbrances of the leasehold interest which provides 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 as long as there is also substantial benefit to be gained by the City.

When encumbrances are made against a leasehold for its development, the City Property Manager shall take appropriate steps to ensure 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.

14. **Improvements** - Upon the termination of the lease by any cause, all lease improvements installed by the lessee will revert to the City or will be removed by the Lessee. This will be at the City's option and without cost to the City. All leasehold improvements and alterations require prior approval by the City Manager.
15. **Dispute Resolution** - All disputes regarding rental amounts shall be brought to the City Council for resolution. Any other disputes will be resolved according to the following dispute resolution procedure which shall be made a part of all leases:

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be settled first by submission of the matter to mediation, the cost of which shall be borne equally by the parties.

16. **Audits** - All percentage leases shall be audited by the City Property Manager in the first year of operation to establish proper reporting procedures, and at least once every year 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 Property Manager.
17. **Real Estate Broker's Fee** - The City will normally not pay a real estate brokerage fee for qualified representation of a selected lessee of City property. When the amount of the rental price offered is a criteria for selecting a lessee in competitive situations, the selection will be based on the highest net rental price, taking into account any brokerage fees involved in the competition.
18. **Policy Review** - This policy shall be reviewed on a periodic basis to determine whether changes or amendments are necessary to maintain the provisions of the policy current with prevailing property rental practices.
19. **Management Fee** – The City shall have the option to assess a fee for the administration and bookkeeping associated with the management of the property which is subject to the lease. Any fee charged shall be a fair market rate.