

Item 10
File 11-1250
(continued from December 7, 2011)

Department:
 Real Estate Division
 Office of Economic Workforce Development (OEWD)

EXECUTIVE SUMMARY

Legislative Objective

- The proposed resolution would (a) authorize the sale of Parcel F on the northeast corner of Fulton Street and Gough Street to the Boys and Girls Club of San Francisco at the below market sales price of \$2,500,000, (b) adopt environmental findings and other findings that the actions are consistent with the City's General Plan and City Planning Code Section 101.1, and (c) authorize other actions.

Fiscal Impacts

- On March 16, 2006 the subject Parcel F was appraised at \$9,900,000. On March 26, 2009, the Office of Economic and Workforce Development (OEWD) and the Real Estate Division revised the appraised value, based on updated economic conditions, to \$8,415,000, pending a public auction of the property.
- Under the proposed resolution, the City would sell Parcel F to the Boys and Girls Club at a below market rate sales price of \$2,500,000. The proposed sales price of \$2,500,000 is \$5,915,000, or 70.3 percent less than the revised estimated market rate sales price of \$8,415,000.
- The clubhouse to be developed by the Boys and Girls Club on Parcel F would have significant community service benefit and investment, which has not been quantified. In addition, although the proposed sales agreement provides that if the Boys and Girls Club develop residential units on Parcel F, the City shall receive 50 percent of the net sale or lease proceeds, the potential additional revenue that the City might receive from such residential sales or leases cannot be quantified.
- Both the \$2,500,000 sales proceeds and any proceeds the City might receive from the 50 percent sharing of residential sales or leases in the future would be expended, in accordance with the cooperative agreement between the City and Caltrans, for specified street, transportation and auxiliary projects.

Policy Considerations

- The Real Estate Division is proposing to sell Parcel F at below market rate and without a competitive selection process and without selling the property through a competitive public auction to the highest bidder. The Sale Agreement does not require the Boys and Girls Club to obtain a certificate of occupancy for seven years and the City will not receive the below market sales price of \$2,500,000 until the earlier of either: (a) 30 days after the conditional use permit is approved, or (b) 24 months after the proposed resolution is approved. The initial Sale Agreement does not require the Boys and Girls Club to develop residential units, and the City would not receive any participation payments if non-residential uses are developed.
- Based on concerns raised at the December 7, 2011 Budget and Finance Committee Meeting, the Office of Economic and Workforce Development is proposing various amendments to the Sale Agreement which include: (1) extending the required use restrictions for the clubhouse by ten years, from 30 years to 40 years; (2) after the 40 year use restrictions expire, the City would receive 40 percent of the proceeds from any sale of the property; (3) requiring 50 percent participation in any commercial developments; (4) requiring the Boys and Girls Club use reasonable commercial efforts to develop at least 30 residential units; and (5) a buyback provision, to allow the City, after ten years, to buy back the subject property

from the Boys and Girls Club for the land's acquisition costs, if the Boys and Girls Club defaults or fails to perform the specified performance benchmarks included in the Sale Agreement.

- All of these proposed amendments are to the Sale Agreement, which is the underlying document that would be authorized if the proposed resolution is approved, such that the only change required to the proposed resolution is on page 2, line 9, to delete "thirty years" and replace it with "forty years" to be consistent regarding the restrictions of the use of Parcel F.

Recommendations

- Amend the proposed resolution on page 2, line 9 to delete "thirty years" and replace it with "forty years" to be consistent with the proposed amended restrictions on the use of Parcel F.
- While the Budget and Legislative Analyst acknowledges that the proposed amendments to the Sale Agreement significantly improve the financial impacts on the City, approval of the proposed resolution is a policy decision, because (1) the proposed sales price for Parcel F of \$2,500,000 is \$5,915,000 or 70.3 percent less than the revised estimated market rate sales price of \$8,415,000, (2) the Real Estate Division did not competitively solicit other non-profit agencies or for-profit developers to purchase the subject property or conduct a competitive auction to the highest bidder, in accordance with the Board of Supervisors previous resolution, and as is the usual procedure when the City sells City-owned property, (3) the Real Estate Division and OEWD did not conduct a formal or public planning process to determine the best use of Parcel F, (4) the Sale Agreement does not require the Boys and Girls Club to obtain a certificate of occupancy until seven years after the date of sale, and (5) the City will not receive the \$2,500,000 sale proceeds until 30 days after the conditional use permit is approved, or 24 months after the proposed resolution is approved.

MANDATE STATEMENT / BACKGROUND

Mandate Statement

In accordance with Section 9.118(c) of the City's Charter, any sale of real property owned by the City and County of San Francisco must first be approved by resolution of the Board of Supervisors.

Background

In 1989, the Central Freeway sustained damage due to the Loma Prieta Earthquake. After discussions between the City and the California Department of Transportation (Caltrans), in 1999, the Central Freeway right-of-way, located along Octavia Boulevard, was transferred from the State to the City. As part of transferring this right-of-way, the State transferred 22 properties, including the subject Parcel F property, to the City at no cost but specified that the proceeds from the sale or lease of those properties were to be used to fund the Octavia Boulevard Project and ancillary transportation projects and related street improvements. Specifically, in 2000, the City and Caltrans entered into a Cooperative Agreement, which specified that the proceeds from the sales or lease be used for the Octavia Boulevard replacement, repaving and rehabilitation of portions of Van Ness Avenue, specified street improvements, and related ancillary projects,

including alley and traffic calming projects, lighting improvements, and various recreational uses in the adjacent area.

According to Mr. John Updike, Director of the Real Estate Division, the City has sold 16 of the 22 properties to date for total sales proceeds of \$31,400,000, and two additional properties are currently in escrow to be sold for an additional approximately \$11,000,000, or a total potential sales proceeds of \$42,400,000 for the 18 properties sold or pending sale. Seven of these 18 properties were sold to the San Francisco Redevelopment Agency (SFRA) for affordable housing and other related housing developments. The remaining 11 of the 18 properties were sold at full market value for various residential and commercial developments. Of the original 22 properties, four properties (22 less 18 sold) including Parcel F, which is the subject of this resolution, remain unsold. Mr. Updike advises that, excluding Parcel F, the remaining three properties are anticipated to be sold at full market value.

Parcel F is located on the northeast corner of Fulton Street and Gough Street, and was originally part of a package of properties (Ordinance No. 104-09) that was previously approved by the Board of Supervisors to be sold at market rate price. Parcel F is a rectangular shaped parcel of 28,350 square feet currently being used as a parking lot, under a lease awarded by the City to the San Francisco Opera. The City currently receives \$7,750 per month, or a total of \$93,000 annually, with these revenues used for transportation and recreation projects, in accordance with the specified Caltrans and City cooperative agreement discussed above.

On March 16, 2006 Real Estate Appraiser Carneghi-Blum and Partners, retained by the Real Estate Division, appraised Parcel F at \$9,900,000. On March 26, 2009, the Office of Economic and Workforce Development (OEWD) and the Real Estate Division revised the appraised value, based on updated economic conditions, to \$8,415,000, pending a public auction of the property. According to Mr. Updike, the Real Estate Division did not submit Parcel F to a public auction, wherein City properties are sold to the highest bidder, or request proposals from other nonprofit agencies or from for-profit developers for the sale of Parcel F because the Boys and Girls Club approached the SFRA, OEWD and the Real Estate Division for assistance to purchase Parcel F to construct a new clubhouse to provide needed services to low-income youth in the immediate Western Addition and Hayes Valley neighborhoods.

The Boys and Girls Club of San Francisco (Boys and Girls Club), a nonprofit organization, currently operates nine clubhouses throughout the City, including two that serve adjacent areas, in (a) the Haight neighborhood at 1950 Page Street, near Stanyon Street, and (b) in the Tenderloin neighborhood at 115 Jones Street near Turk Street. Based on information provided at the December 7, 2011 Budget and Finance Committee hearing, the Boys and Girls Club plans to close and sell their 1950 Page Street clubhouse property in the near future. Based on information provided by the SFRA, OEWD and the Real Estate Division, the Boys and Girls Club approached the City to purchase Parcel F as the site for an improved replacement ninth clubhouse because Parcel F is both the right size and location to serve families in the Haight, Western Addition and Hayes Valley, which are the Boys and Girls Club's target population.

Mr. Updike states that the Real Estate Division negotiated with the Boys and Girls Club and determined that selling Parcel F at below market rate to the Boys and Girls Club was the best use of the property based on discussions between OEWD and SFRA. According to Mr. Updike,

the Real Estate Division entered into negotiations with the Boys and Girls Club for the sale of Parcel F to the Boys and Girls Club in the fall of 2010.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (a) authorize the sale of Parcel F located on the northeast corner of Fulton Street and Gough Street, to the Boys and Girls Club of San Francisco at the below market rate sales price of \$2,500,000, without having the sale of this property undergo a competitive public auction process, (b) adopt environmental findings and other findings that the actions set forth in this resolution are consistent with the City's General Plan and Eight Priority Policies of City Planning Code Section 101.1, and (c) authorize other actions in furtherance of this resolution.

Sale of Parcel F

According to Mr. Updike, the Boys and Girls Club intends to construct a clubhouse on Parcel F that includes a high school-size gymnasium, competition-size pool, learning center, arts room, and dedicated community center for teenagers. Ms. Kelly Pretzer, Project Manager in the Office of Economic and Workforce Development advises that the total estimated costs to construct the clubhouse is \$18,000,000, of which the Boys and Girls Club has an unknown amount of available capital. According to Mr. Updike, the Boys and Girls Club has a history of achieving its fundraising targets and, during informal discussions, the Boys and Girls Club indicated that they would likely undertake a major capital fundraising campaign and potentially sell the rights to develop residential units above the clubhouse on Parcel F.

The initially proposed Purchase and Sale Agreement¹ (Sale Agreement) between the City's Real Estate Division and the Boys and Girls Club contains the following provisions:

Project Covenants and Restrictions

Because the Boys and Girls Club is purchasing Parcel F from the City at less than fair market value, the Sale Agreement requires the Boys and Girls Club to use the property to provide services and programs for low-income San Francisco youth for 30 years. After 30 years, this requirement terminates, such that if the property is then sold, the Boys and Girls Club would retain all sale proceeds at full market value, with no proceeds required to be returned to the City.

Conditions to Closing

Under the proposed Sale Agreement, the effective date of sale of the proposed Parcel F property and the transfer of the \$2,500,000 from the Boys and Girls Club to the City will occur the earlier of either: (a) 30 days after the conditional use permit is approved, or (b) 24 months after the proposed resolution is approved.

¹ See Proposed Amendments to the Sale Agreement on page 8-8 of this report for amendments that are now being proposed to the Purchase and Sale Agreement between the City and County of San Francisco and the Boys and Girls Club of San Francisco.

Performance Benchmarks

Under the proposed Sale Agreement, the Boys and Girls Club must:

- Submit an application to the Planning Department for an environmental assessment within nine months of the sales date.
- Submit an application to the Planning Department for a conditional use permit to develop the clubhouse within 18 months, including any applications for variances or discretionary approvals.
- Respond to any deficiencies identified by OEWD, who would review the Boys and Girls Club's conditional use application or other applications for use of Parcel F within a specified timeframe.

Failure to meet these performance benchmarks could cause the City's Real Estate Division to terminate the Sale Agreement. However, the performance benchmarks do not require the Boys and Girls Club to obtain financing or building permits for the development of the clubhouse within a specified period of time. Nor does the Sale Agreement provide penalties, including termination of the sales agreement, if the Boys and Girls Club fails to obtain sufficient financing to develop the clubhouse project as proposed.

According to the project covenants and restrictions, the Boys and Girls Club agrees to timely construction and operation of the clubhouse that includes a pool and gymnasium. Although the project covenants and restrictions contain a template, requiring the Boys and Girls Club to obtain site permits and building permits within a specified timeframe after obtaining the conditional use permits, the exact timeframe has not yet been written into the Sale Agreement. However, the Sale Agreement does not require the Boys and Girls Club to obtain a temporary certificate of occupancy until seven years after the sale date.

City Participation in the Proceeds of the Sale of Residential Units

According to the initially proposed Sale Agreement, if the Boys and Girls Club obtain conditional use permits to develop residential units on Parcel F, the following provisions apply:

- The Boys and Girls Club must sell or lease the residential units at fair market or fair rental value, except for the sale or lease of affordable housing units.
- If the Boys and Girls Club sells or leases all or a portion of the residential development to a third party, the City shall receive 50 percent of the net sale or lease proceeds.

However, the initially proposed Sale Agreement does not require the Boys and Girls Club to develop any residential units on Parcel F. Furthermore, if the Boys and Girls Club develop any non-residential uses on Parcel F, there are no provisions for sharing in any sale or lease proceeds with the City.

Economic Justice Covenants

When the Board of Supervisors authorized the sale of Parcel F and the other Central Freeway parcels (Ordinance No. 104-09), the Board of Supervisors required developers to use good faith efforts to hire local residents to perform the construction work for developments greater than 60 units. The proposed Sale Agreement requires the construction contractors to pay not less than the City's prevailing wages to their employees and to adhere to the City's first source local hiring requirements, which requires the developer to use their best efforts to hire San Francisco residents.

Environmental Determination

The City's Planning Department has determined that the sale of the subject Parcel F property (a) conforms to the City's General Plan, (b) is categorically exempt from the California Environmental Quality Act (CEQA), and (c) is consistent with the City's General Plan and City Planning Code Section 101.1(b).

Other Actions

The proposed resolution states that the Director of Real Estate can execute the agreement and related documents, such as deeds of trust, property title, and other real estate documents and can make modifications or amendments that do not materially increase the obligations of the City, which according to Mr. Updike, is standard in every real estate transaction authorization.

FISCAL IMPACT

Under the proposed resolution, the City would sell Parcel F to the Boys and Girls Club at a below market rate sales price of \$2,500,000. The proposed sales price of \$2,500,000 is \$5,915,000, or 70.3 percent less than the revised estimated market rate price of \$8,415,000.

According to Mr. Updike, the clubhouse to be developed by the Boys and Girls Club on Parcel F has significant community service benefit and investment. However, the Real Estate Division has provided no documentation to the Budget and Legislative Analyst with respect to quantifying such benefit and investment.

In addition, although the proposed Sale Agreement provides that, if the Boys and Girls Club develops residential units on Parcel F, the City shall receive 50 percent of the net sale or lease proceeds, Mr. Updike could not quantify the potential additional revenue that the City might receive from such residential sales or leases. Both the \$2,500,000 sales proceeds and any proceeds the City might receive from the 50 percent sharing of residential sales or leases in the future would be expended, in accordance with the Cooperative Agreement between the City and Caltrans, for specified street, transportation and auxiliary projects, such as recreation projects, as discussed above.

POLICY CONSIDERATIONS**The Real Estate Division is proposing to sell Parcel F at below market rate and without a competitive selection process through sale by public auction**

Because the Real Estate Division did not competitively solicit other non-profit agencies or for-profit developers to purchase Parcel F and because the City is not selling the subject property through a competitive public auction, the City cannot be assured that the proposed Sale Agreement is the highest and best use of the property.

Although the Real Estate Division considers development of the clubhouse to provide significant community benefit to low-income youth in the Western Addition, the Real Estate Division has provided no documentation to the Budget and Legislative Analyst with respect to quantifying the community benefits.

The Real Estate Division and OEWD did not undergo formal or public planning processes to determine the best use of Parcel F. This resolution sets a precedent for other non-profit agencies to request to purchase the three remaining Central Freeway parcels, or other City properties, at below market rates without conforming to formal policies or plans as adopted by the Board of Supervisors.

The Sale Agreement does not require the Boys and Girls Club to obtain a certificate of occupancy for seven years

While the Sale Agreement requires the Boys and Girls Club to obtain conditional use, site, or building permits within a specified period of time, the actual date for obtaining the certificate of occupancy is not until seven years after the sale date, or approximately 2019. In addition, the City would not receive the \$2,500,000 sale proceeds until the earlier of either: (a) 30 days after the conditional use permit is approved, or (b) 24 months after the proposed resolution is approved. Further, the Boys and Girls Club has not yet fully identified the sources of funding for the total estimated cost of \$16,000,000 to complete construction of the new clubhouse.

While the Sale Agreement provides for the City to receive 50 percent of net sales or lease proceeds from the development of residential units, the Sale Agreement does not require the Boys and Girls Club to develop such residential units

The City could realize additional proceeds from Parcel F if the Boys and Girls Club ultimately develops residential units on the site. Specifically, the City would receive 50 percent of the net sales or lease proceeds from the development by the Boys and Girls Club of such residential units. However, the Sale Agreement does not require the Boys and Girls Club to develop the residential units, and the City would not receive any participation payments if non-residential uses are developed. Also, the City would only receive net sale or lease proceeds if the Boys or Girls Club were to sell or lease the residential development to a third party.

Proposed Amendments to the Purchase and Sale Agreement

At the December 7, 2011 Budget and Finance Committee meeting, based on a number of concerns raised by the Budget and Legislative Analyst and members of the Budget and Finance Committee, the Office of Economic and Workforce Development is now proposing various amendments to the proposed Purchase and Sale Agreement between the City and the Boys and Girls Club. These amendments include: (1) extending the required use restrictions for the clubhouse by an additional ten years, from the current 30 years to 40 years; (2) after the 40 year use restrictions expire, the City would receive 40 percent² of the proceeds from any sale of the property which the City did not previously participate in sale proceeds, however, if the property includes a clubhouse, an independent third-party appraiser would be selected to establish the land price; (3) new language requiring 50 percent participation in any commercial developments, similar to the existing residential development requirements; (4) requiring that the Boys and Girls Club use reasonable commercial efforts to develop at least 30 residential units; and (5) a buyback provision, which would allow the City, after ten years, to buy back the subject property from the Boys and Girls Club for the actual land acquisition costs, if the Boys and Girls Club defaults or fails to perform the specified performance benchmarks included in the Sale Agreement.

The Budget and Legislative Analyst notes that all of these proposed amendments are to the Sale Agreement, which is the underlying document that would be authorized if the proposed resolution is approved, such that the only change required to the proposed resolution is on page 2, line 9, to delete “thirty years” and replace it with “forty years” to be consistent regarding the restrictions of the use of Parcel F.

RECOMMENDATIONS

1. Amend the proposed resolution on page 2, line 9 to delete “thirty years” and replace it with “forty years” to be consistent with the proposed amended restrictions on the use of Parcel F.
2. While the Budget and Legislative Analyst acknowledges that the proposed amendments to the Sale Agreement significantly improve the financial impacts on the City, approval of the proposed resolution is a policy decision, because (1) the proposed sales price for Parcel F of \$2,500,000 is \$5,915,000 or 70.3 percent less than the revised estimated market rate sales price of \$8,415,000, (2) the Real Estate Division did not competitively solicit other non-profit agencies or for-profit developers to purchase the subject property or conduct a competitive auction to the highest bidder, in accordance with the Board of Supervisors previous resolution, and as is the usual procedure when the City sells City-owned property, (3) the Real Estate Division and OEWD did not conduct a formal or public planning process to determine the best use of Parcel F, (4) the Sale Agreement does not require the Boys and Girls Club to obtain a certificate of occupancy until seven years after the date of sale, and (5)

² According to Ms. Pretzer, the City would receive 40 percent of the proceeds from any sale of the remaining portions of the property that the City has not previously participated in revenue sharing. This assumes that the City would have already participated in 50 percent sharing of any residential and/or commercial sales on the property. In addition, Ms. Pretzer advises that City is proposed to participate in 40 percent net sale proceeds to allow the Boys and Girls Club to receive the balance of 60 percent of the net sale proceeds, in order to allow the Boys and Girls Club to recoup their construction costs and allow for the clubhouse facility’s devaluation over time.

the City will not receive the \$2,500,000 sale proceeds until 30 days after the conditional use permit is approved, or 24 months after the proposed resolution is approved.