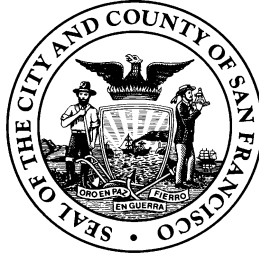


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Updike, Director, Real Estate Division
Ben Rosenfield, City Controller, Office of the Controller
Mohammed Nuru, Director, Public Works
Tom Hui, Director, Department of Building Inspection
John Rahaim, Director, Planning Department
Harlan Kelly, Jr., General Manager, Public Utilities Commission
Margaret McArthur, Recreation and Parks Commission
Amy Quesada, Port Commission
Jean Caramatti, Airport Commission
Ed Reiskin, Executive Director, Municipal Transportation Agency

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight Committee, Board of Supervisors

DATE: May 2, 2016

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following substitute legislation, introduced by Supervisor Peskin on April 26, 2016:

File No. 160361

Ordinance amending the Administrative Code to require appraisals and appraisal reviews for certain City acquisitions, conveyances, and leases of real property; requiring that appraisals conform to the Uniform Standards of Professional Appraisal Practice and be prepared by qualified appraisers; and increasing the rent limits for the Director of Property's existing authority to enter into leases for the City.

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:

Todd Rydstrom, Office of the Controller
Frank Lee, Public Works
Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
Juliet Ellis, Public Utilities Commission
Donna Hood, Public Utilities Commission
Janet Martinsen, Municipal Transportation Agency
Kate Breen, Municipal Transportation Agency
Dillon Auyoung, Municipal Transportation Agency

1 [Administrative Code - Appraisals for the Acquisition, Conveyance, and Lease of Real
2 Property]

3 **Ordinance amending the Administrative Code to require appraisals and appraisal**
4 **reviews for certain City acquisitions, conveyances, and leases of real property;**
5 **requiring that appraisals conform to the Uniform Standards of Professional Appraisal**
6 **Practice and be prepared by qualified appraisers; and increasing the rent limits for the**
7 **Director of Property's existing authority to enter into leases for the City.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. The Administrative Code is hereby amended by revising Chapter 23, Article
17 I, Sections 23.2-23.3, Article III, Sections 23.26-23.27, and Article IV, Sections 23.30-23.31,
18 to read as follows:

19 **SEC. 23.2. CHAPTER DEFINITIONS.**

20 Chapter Definitions. As used in this Chapter 23, the following initially capitalized terms
21 shall have the meanings ascribed to them in this Section:

22 "Acquire" shall mean to acquire, accept, purchase, or exchange an easement or fee
23 title in Real Property. "Acquisition" shall have a correlative meaning.

1 "Appraisal" shall mean a written opinion of value, as defined by the most recent version of
2 USPAP, that is prepared for or received by the City, is prepared by a Qualified Appraiser, and
3 conforms with USPAP appraisal guidelines.

4 "Appraisal Review" shall mean a written opinion about the quality of a Qualified Appraiser's
5 work performed as part of an Appraisal that conforms with applicable USPAP appraisal review
6 guidelines. An Appraisal Review shall be conducted by a Reviewer and include a summary of the
7 reasons and findings for recommending or not recommending the subject Appraisal for approval.

8 "City" shall mean the City and County of San Francisco.

9 "Charter" shall mean the Charter of the City and County of San Francisco.

10 "Code" shall mean the Administrative Code of the City and County of San Francisco.

11 "Competitive Bidding Process" or "Competitive Bidding Procedures" shall mean a
12 request for proposals, request for qualifications, or other publicly noticed competitive
13 solicitation with specified criteria for selection.

14 "Convey" shall mean to convey, sell, transfer, grant, or relinquish an easement or fee
15 title in Real Property. "Conveyance" shall have a correlative meaning.

16 "Lease" shall mean a lease, sublease, or other means of granting a right to occupy or
17 use Real Property, and shall also include a license, permit to enter, use permit, or other
18 similar instrument.

19 "Market Rent" shall mean the most probable rent that a Real Property should bring in a
20 competitive and open market reflecting all conditions and restrictions of the lease agreement.

21 "Qualified Appraiser" shall mean a person who is expected to perform valuation services
22 competently and in a manner that is independent, impartial, and objective, holds a certified general
23 license issued by the California Bureau of Real Estate Appraisers and the designation of MAI from the
24 Appraisal Institute, and has five or more years of recent experience appraising real estate of the same
25 type and in the same city, county, or wider area, as applicable, as the subject Real Property.

1 "Real Estate Department" shall mean the Real Estate Division of the Department of
2 Administrative Services.

3 "Real Property" shall mean any real property interest in land or improvements, including
4 an easement, Lease, or fee interest.

5 "Reviewer" shall mean a Qualified Appraiser who performs Appraisal Reviews.

6 "USPAP" shall mean the current edition of the Uniform Standards of Professional Appraisal
7 Practice in effect on the date of an Appraisal or Appraisal Review.

8 9 **SEC. 23.3. CONVEYANCE AND ACQUISITION OF REAL PROPERTY.**

10 The Director of Property may Convey any Real Property owned by the City upon
11 recommendation of the department responsible for the administration of such Real Property,
12 excepting park lands pursuant to Charter Section 4.113(2) or where a Conveyance of such
13 Real Property would violate the terms of any gift, trust, deed restriction, bond covenant, or
14 other covenant or restriction under which the City holds the Real Property. Such Conveyance
15 may be made after the Board of Supervisors, by resolution, determines that the public interest
16 or necessity demands, or will not be inconvenienced by, such Conveyance, and approves the
17 Conveyance. ~~If the Conveyance is a Competitive Bidding Process or a public auction, the Board shall~~
18 ~~approve and confirm by resolution any such Conveyance after such Competitive Bidding Process or~~
19 ~~auction process is complete. The Board's resolution authorizing a Conveyance shall set forth the means~~
20 ~~of Conveyance, whether by public auction, Competitive Bidding Process or such other means of~~
21 ~~disposition as the Board may authorize by resolution.~~ The Board of Supervisors may authorize
22 such Conveyance by resolution without advertisement, public auction, or Competitive Bidding
23 Process if it determines that an advertisement, public auction, or Competitive Bidding Process is
24 impractical, ~~or impossible,~~ or is otherwise not in the public interest, including, for example only
25 and not by way of limitation, when the Real Property is not capable of independent

1 development, will be exchanged for other Real Property, or when the Board determines that a
2 negotiated direct Conveyance of the Real Property will further a proper public purpose.

3 Before the Board of Supervisors approves a Conveyance, the Director of Property shall
4 determine the fair market value of such Real Property based on a review of available and relevant
5 data and give the notices required by California Government Code Section 54220 et seq.,
6 Administrative Code Chapter 23A, or any other applicable provision of state law. Before the Board
7 of Supervisors approves any Acquisition of Real Property that is not a donation of Real Property, the
8 Director of Property shall determine the fair market value of such Real Property based on a review of
9 available and relevant data.

10 If the Director of Property determines the fair market value of Real Property that the City
11 intends to Acquire or Convey exceeds \$10,000 and the proposed Acquisition is not a donation, the
12 Director of Property shall obtain an Appraisal for the Real Property. If the Appraisal determines the
13 fair market value of the Real Property exceeds \$200,000, the Director of Property shall obtain an
14 Appraisal Review for such Appraisal. Any Appraisal and Appraisal Review shall have an effective date
15 of value that is not earlier than nine months before the date legislation for the proposed Acquisition or
16 Conveyance is submitted to the Board of Supervisors.

17 The Director of Property shall also advertise by publication the proposed Conveyance if
18 the Conveyance will be by public auction or Competitive Bidding Process, for no less than 30
19 days an appropriate period as determined by the Director of Property. Every Conveyance other
20 than a sale at public auction or through a Competitive Bidding Process shall be for a sales
21 price of at least 100% ~~percent~~ of the appraised value ~~Director of Property's appraisal~~ of such Real
22 Property, except where the Board determines either that (a) a lesser sum will further a proper
23 public purpose, or (b) based on substantial evidence in the record, the terms and conditions
24 of such Conveyance are reflective of the fair market value of the Real Property
25 notwithstanding the appraised value ~~appraisal~~.

1 **SEC. 23.26. YEAR-TO-YEAR AND SHORTER LEASES.**

2 The Director of Property shall have the authority to enter into the following Leases on
3 behalf of the City as tenant: *(a)* on a year-to-year or shorter tenancy where the ~~rental or other~~
4 consideration to be paid for the ~~Lease City occupancy or use of Real Property within the City and~~
5 ~~County of San Francisco~~ is ~~\$15,000~~~~\$5,000~~ or less per month, and *(b)* where the term of a Lease
6 will not exceed 31 days, including without limitation month-to-month Leases.

7 The Director of Property may include in any Lease authorized by this Section 23.26 an
8 appropriate indemnity agreement for the purpose of providing for the City's occupancy or
9 other use of such Real Property (including, without limitation, conducting environmental
10 investigations and assessments), subject, however, to written approval as to form by the City
11 Attorney and written recommendation by the head of the department concerned.

12 The Director of Property shall determine the rental or other consideration to be paid for
13 all such Real Property and shall obtain from the Controller written certification that funds are
14 available for such Lease. The department concerned shall give written notice to the Director of
15 Property when such Lease is terminated by the City.

16
17 **SEC. 23.27. EXECUTION OF LEASES; APPRAISALS AND APPRAISAL REVIEWS;**
18 **RESOLUTION AUTHORIZING LEASE.**

19 Except as otherwise provided by the Charter, Section 23.26 above, or other provision
20 of this Code, the Board of Supervisors shall approve all Leases on behalf of the City as tenant
21 by resolution. Before adoption, the head of the department concerned shall recommend any
22 such resolution for approval by the Board of Supervisors and the Director of Property shall
23 determine the Market Rent of such Lease based on a review of available and relevant data. If the
24 consideration to be paid by the City for the Lease as base rent is more than \$45 per square foot per
25 year, the Director of Property, on behalf of the department concerned, shall obtain an Appraisal for the

1 Market Rent of the Lease. If the consideration to be paid by the City for the Lease as base rent is more
2 than \$60 per square foot per year, the Director of Property, on behalf of the department concerned,
3 shall obtain an Appraisal Review for such Appraisal. Any Appraisal or Appraisal Review shall have an
4 effective date of value that is not earlier than nine months before the date legislation for the proposed
5 Lease is submitted to the Board of Supervisors. All such Leases shall be executed by the Director
6 of Property or as otherwise directed by resolution of the Board of Supervisors.

8 **SEC. 23.30. LEASE OF REAL PROPERTY.**

9 Except as provided by Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter
10 and by Sections 2A.173 and 23.36 ~~and~~ of this Code, or as otherwise provided by the Charter
11 or this Code, the Director of Property shall have the charge of the Lease of Real Property
12 owned by the City. When the head of any department in charge of Real Property reports to
13 the Director of Property that certain land is not required for the purposes of the department,
14 the Board of Supervisors, by resolution, may authorize the Lease of such Real Property. The
15 Director of Property shall determine the Market Rent of such Lease based on a review of available and
16 relevant data. If the Market Rent of the Lease is more than \$45 per square foot per year as base rent,
17 the Director of Property shall obtain an Appraisal for such Lease. If an Appraisal determines the
18 Market Rent of the Lease exceeds \$60 per square foot per year as base rent, the Director of Property
19 shall obtain an Appraisal Review for such Appraisal. Any Appraisal or Appraisal Review shall have an
20 effective date of value that is not earlier than nine months before the date legislation for the proposed
21 Lease is submitted to the Board of Supervisors. The Director of Property shall arrange for such
22 Lease to the highest responsible bidder in accordance with Competitive Bidding Procedures
23 and for no less than the Director of Property's opinion of Market Rent if there is no Appraisal, or for
24 no less than the Market Rent stated in the Appraisal if there is an Appraisal, unless the Board of
25 Supervisors has by resolution found that such Competitive Bidding Procedures are impractical

1 or impossible or has authorized other means of award in furtherance of a proper public
2 purpose. The Director of Property shall collect rents due under such Lease.

3 When the Public Utilities Commission, the Recreation and Park Commission, the Port
4 Commission, the Airport Commission, or the Municipal Transportation Agency require approval of the
5 Board of Supervisors to a proposed Lease of Real Property owned by the City, the applicable
6 Commission or Agency shall determine the Market Rent of such Lease based on a review of available
7 and relevant data. If the Market Rent of the Lease is more than \$45 per square foot per year as base
8 rent, the applicable Commission or Agency shall, through the Director of Property, obtain an
9 Appraisal of the Market Rent for the Lease, and such Lease shall be for no less than the Market Rent
10 established in the Appraisal unless the Commission or Agency determines that applying the Market
11 Rent requirement would interfere with its capacity in discharging one of its core functions under the
12 City Charter. If an Appraisal determines the Market Rent of the Lease exceeds \$60 per square foot per
13 year as base rent, the applicable Commission or Agency shall, through the Director of Property, obtain
14 an Appraisal Review for the Appraisal. Any Appraisal or Appraisal Review shall have an effective date
15 of valuation that is not earlier than nine months before the date legislation for the proposed Lease is
16 submitted to the Board of Supervisors.

17 18 **SEC. 23.31. YEAR-TO-YEAR OR SHORTER LEASES.**

19 If any department in charge of City-owned Real Property requests the Director of
20 Property to Lease City-owned Real Property, the Director of Property shall have the authority
21 to enter into the following Leases on behalf of the City as Landlord: (a) on a year-to-year or
22 shorter tenancy, where such Real Property has a fair market rental value of ~~\$15,000~~\$5,000 or
23 less per month, and (b) where the term of a Lease will not exceed 31 days, including without
24 limitation month-to-month Leases. In addition, where, in the opinion of the Director of
25 Property, the Leasing of such Real Property for landscaping or gardening serves a public

1 purpose, the Director of Property may Lease such Real Property at a nominal rental, on a
2 year-to-year or shorter tenancy, and on such other terms and conditions as the Director of
3 Property may require.

4 Within 10 days after entering into any Lease under this Section 23.31, the Budget and
5 Finance Committee of the Board of Supervisors shall be notified by the Director of Property as
6 to the terms and conditions of such Leases.

7
8 Section 2. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor's veto of the ordinance.

12
13 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that
18
19
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25

1 appears under the official title of the ordinance.

2
3 APPROVED AS TO FORM:
4 DENNIS J. HERRERA, City Attorney

5
6 By:


CAROL WONG

Deputy City Attorney

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