

RESOLUTION No. 212957

Adopted on APR 4 1975

BE IT RESOLVED, by the Council of The City of San Diego as follows:

1. That Council Policy 700-10 entitled "Leasing of City-Owned Real Estate" be and it is hereby amended as set forth in the form of Council Policy filed in the office of the City Clerk as Document No. 750777.
2. That Council Policy 700-11 entitled "Lease Assignment" be and it is hereby deleted in its entirety and RESolution No. 169965, adopted March 15, 1962 is hereby rescinded.
3. That Council Policy 700-12 entitled "Lease Negotiation" be and it is hereby deleted in its entirety and Resolution No. 169955, adopted March 15, 1962 is hereby rescinded.
4. That Council Policy 700-29 entitled "Disposition of City-Owned Property in Open Space Acquisition Sites" be and it is hereby amended as set forth in the form of Council Policy filed in the office of the City Clerk as Document No. 750778.

BE IT FURTHER RESOLVED, that the City Clerk be and he is hereby instructed to add and delete, as indicated, the aforesaid policies to the Council Policy Manual.

APPROVED: JOHN W. WITT, City Attorney

By 
Harold Valderhaug, Deputy

HOV:nr
Rev. 4-8-75
Or.Dept. PF&R Comm.

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SUBJECT:	SAN DIEGO, CALIF.	Policy Number	Effective Date	Page
	Leasing of City-Owned Real Estate	700-10		

BACKGROUND

Leasing City-owned land preserves the integrity of the City's land resource and provides for finite development and control. It has been demonstrated that leasing City-owned property is an effective vehicle for developing a sustaining flow of revenue and provides beneficial capital improvements by private investors. The City frequently finds it desirable to lease both surplus and nonsurplus City-owned real property to provide a public service or facility.

PURPOSE

To establish guidelines for the leasing of City-owned real property.

POLICY

1. Catalog: A catalog of all real property owned in fee by the City will be maintained as an integral part of the Property Management Program listing size, location, zoning, development restrictions, and any other information pertinent to the status and use of each parcel.
2. Long-Term Leases: All leases in excess of two (2) years must be approved by resolution of the Council.
3. Short-Term Leases: The City Manager may execute leases of City-owned real property for terms of two (2) years or less. City Manager shall provide the Mayor and City Council with a quarterly report summarizing terms and conditions of new leases executed by the City Manager.
4. Real Estate Broker's Fee: The City may pay a commission to a licensed real estate broker representing a principal with whom the City has entered into a bona fide lease contract. The amount of commission shall be in accordance with the commission schedule adopted by resolution of the Council pursuant to Municipal Code Section 22.0905.

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 OFFICE OF THE CITY CLERK
 SAN DIEGO, CALIFORNIA

5. Standardized Lease Format: One standardized lease agreement form shall be reviewed and approved by Council for all flat-rate leases and another for all percentage-rate leases. Exceptions to this policy may be granted by resolution of Council upon the submission in writing of reasons deemed by Council to be good and sufficient.
6. Rates of Return: The City Council shall adopt by resolution capitalization rates of return for both short-term (2 years or less) and long-term leases. These rates of return shall be used in all rental negotiations until new rates are established by Council. City staff shall conduct surveys of the factors relating to the setting of these rates of return and shall make recommendations to Council regarding the proper rates.
7. Fair Market Value: It shall be City policy to seek fair market rental for its properties. It is recognized that in certain exceptional cases rental discounts may be warranted. Discounts shall be granted only by resolution of Council and only upon a presentation to Council of the exact amount of the discount and the reasoning supporting it.
8. Rental Rate Adjustments and Reviews:
 - (a) Flat Rentals; Rent rate adjustments shall be made during each three-year period, based upon the Los Angeles Consumer Price Index compiled by the U. S. Bureau of Labor Statistics, provided that the increases shall not exceed 6% per year, non-cumulative.
 - (b) Long Term Flat Rate Leases; For leases of 24 years or more, a rental review shall occur at the end of the 12th year and every six years thereafter with interim adjustments for Consumer Price Index changes every three years as in "a" above. Leases providing for rental rate review shall provide for arbitration.
 - (c) Percentage Leases; Percentage leases shall be reviewed every twelve (12) years. Prevailing published market percentage rates shall be utilized in establishing percentages of gross. Percentage leases shall provide for arbitration.
9. Minimum Rents: Annual minimum rentals for percentage leases shall be set at $66 \frac{2}{3}\%$ of the average gross rental produced during the three years preceding the rental review date. If the application of this formula indicates a minimum rental substantially in excess of what would be generated on a flat rental basis, the City Manager shall have discretion in the forthcoming rental period to a lower figure. The Manager shall report on the rationale for such adjustment to the Council at the time the rental review is presented for Council approval.

10. Appraisals: Appraisals shall be based upon the highest and best use of the land which is consistent with the General Plan and adopted community plan. An ongoing program of periodic reappraisal of City properties shall be conducted by independent fee appraisers or qualified City staff to insure that all rents or sales meet the fair market rental criteria established by this policy. The findings of such appraisals shall be published annually in the Catalogs of City properties. The full text of an independent fee appraisal shall be presented to Council during consideration of proposed agreements on properties valued at \$50,000 or more. Such appraisals shall have been made within one year preceding their submission to Council.
11. Reversion/Removal: Leases shall require removal of permanent improvements at their termination or reversion to the lessor at the option of the lessor.
12. Visibility and Public Knowledge of Proposed Agreements: Public notice of any proposed disposition, sale, or lease of City property shall be made thirty days before consideration by Council. Public notice of receipt by the City Manager of an acceptable proposal for the disposition, sale, or lease of City property shall be made at least thirty days before consideration of said proposal by Council. Also, the Manager shall file a statement with the City Clerk that an acceptable proposal has been received. Said statement shall specify the value ascribed to or implied for the City property by the acceptable proposal. Said statement shall be on file with the City Clerk and available for public examination for at least thirty (30) days preceding consideration of the proposal by Council.

GUIDELINES

1. A Manager's Catalogue of all City-owned properties shall be maintained and updated annually. Properties shall be described in terms of the following information.

Plat number; Equipment/Building/Key; Area Description; Address; Property File Code; Document Number; Lease Term; Property Use; Legal Description; Description/Improvements; Fiscal Year Acquired; Acres (3 decimal places); Lot Size; Purpose of Acquisition; Acquisition Method; Source of Acquisition Funds; Vacant (yes, no)

LEGISLATION - Date Adopted; Ordinance Number; Resolution Number

DEED DATA - City Document No.; Deed Recorded Date; Recorder's File/Page No.; Cost of Acquisition; Cost of Land Only; Cost Includes: Appraisal \$ _____, Title & Escrow \$ _____

APPRAISALS - Appraiser _____, Date, Value, Explanation; Appraiser _____, Date Value, Explanation; Assessed Value, Land, improvements, possessory interest, date of valuation; City objectives, Long-term, Short-term (in terms of General and Community Plan)

EXISTING LEASE - month to month, less than 2 years, 2-5 years, 5-10 years, over 10 years; Name of Lessee, Names of officers if tenant is a corporation; Income to City for 3 years, Projected per year, Actual per year; General Lease Requirements; Basic terms of existing contract; Cost of living adjustment, Lease terms review interval; Assignments; Minimum acceptable terms for lease/renewal

MONITORING DATA - Log of on-site visits by City staff within three years; Observations and/or recommendations by monitor; Next date at which property will become available, sale, lease, lease renewal

ACCOUNTING - Fund No.; Department level; Revenue Account No.; Lessee's Name; Accounting Name; Building/Property; Invoice No.; Date Rent/Penalty Received; Amount Rent/Penalty Paid (this invoice); Actual Rent/Penalty Received, Previous Fiscal Year; Estimated Rent/Penalty, 1st half current Fiscal Year; Actual Rent/Penalty Received, 1st half current Fiscal Year, Cumulative; Estimated Rent/Penalty 2nd half current Fiscal Year; Actual Rent/Penalty Received, 2nd half current Fiscal Year, Cumulative; Estimate total revenue, Current Fiscal Year; Sources of revenue, by operation (e.g. room, food, liquor, etc.) for current Fiscal Year if a percentage lease.

2. A Marketing Catalogue of Properties Becoming Available shall be published yearly*. It shall contain the following information for all properties which shall become available for sale, lease, or lease renewal within three (3) years of the date of publication. All properties for which there is no planned use by a governmental agency shall be considered available. Long-range planned uses shall be identified. Interim uses which are not incompatible with long-range objectives shall be solicited.

- Plat No.; Equipment/Building/Key (Number); Area Description; Address; Property File Code; Lease Term; Property Use; Legal Description; Description/Improvements; Acres (3 decimal places); Lot Size; Vacant (yes, no); Deed Recorded Date; Appraiser, Date, Value, Explanation; Assessed value, land, improvements, possessory interest, date of valuation; City objectives (in terms of General and Community Plan), long-term, short-term; Income to City for past three years, projected per year, actual per year; Minimum acceptable terms for lease/renewal; Next date at which property presently leased or tenant occupied will become available for sale, lease or lease renewal.

* Available to interested parties for a fee.

3. Competitive proposals for available properties shall be solicited by the Marketing Catalogue. Public notice of the publication and availability of the catalogue will be made by advertisement in the principal daily newspaper of the City for a minimum of two weeks following the date of its publication. Notice of the publication of the Catalogue may be extended to a broader market whenever desirable and practicable. In soliciting lease proposals, the City will reserve the right to negotiate additional terms and conditions with any or all of the proposers and to reject any or all proposals.

Procedures for Marketing Properties
for Which No Prospectus is Available

- A. Publish catalogue listing properties which are available or will become available within one year.
- B. Require a 30-day grace period before proposals will be accepted for properties listed.
- C. After 30 days, proposals will be accepted. Proposals will be logged in by the City Clerk who will assign proposals a serial number, record the date and time of submittal, and provide a written receipt of the same.
- D. The broker who submits the first acceptable proposal for a particular property shall be awarded a half commission based on the value of the proposal which ultimately is successful.
- E. Within 3 working days of determining that an acceptable proposal has been received, the City Manager shall publish and file with the City Clerk an official notice stating:
 - a) that an acceptable proposal has been received for the specified property;
 - b) the value ascribed to the property by the proposal;
 - c) that the City will receive and consider additional proposals for the property for an additional 25 days; and
 - d) that all acceptable proposals will be presented to Council for final selection within 35 days of the publication of this notice. Publication of the notice shall continue for 3 working days.
- F. All acceptable proposals received within 25 days of the publication of the aforementioned notice shall be summarized and presented to Council together with recommendations by the Manager. Final selection of the successful proposal shall be made by Council.
- G. The broker who submits the proposal which is ultimately successful shall receive a half commission. (If that proposal is also the first one which was found acceptable, the broker shall receive a full commission.)

4. Special Development Proposals (Prospectus): Lease proposals will be solicited from all interested parties on parcels identified in the Marketing Catalogue as requiring a specific leasehold development or public service and on those parcels for which a substantial market interest is indicated. Competitive proposals will be solicited through a prospectus by direct mail and by advertising in the City's official newspaper and principal daily newspaper for a minimum of three (3) consecutive days. Solicitation and advertising may be extended to a broader market whenever desirable and practical. The City Manager will analyze all proposals on the basis of the desirability of the proposed leasehold development, experience and qualifications of the proposer to carry out the contract and the amount of rental consideration being offered. Proposals are not to be considered as bids and the City is not obligated to accept any proposal so submitted. The City Manager will have the right to negotiate additional terms and conditions or modification of proposals with any or all of the proposers. Said modified terms or conditions shall not be less than the minimum requirements set out in the prospectus. Properties for which a development proposal prospectus is available shall be clearly designated in the Marketing Catalogue.

Procedures for Marketing Properties
for which a Prospectus is Available

- A. Publish marketing catalogue in which prospectus properties are designated clearly. Catalogue shall specify the closing date for receipt of proposals for prospectus properties. Said closing date shall follow publication of the marketing catalogue by at least 60 days.
- B. City staff shall counsel parties submitting acceptable proposals to provide opportunity for proposals to be adjusted to meet major City considerations. City recommendations for proposal adjustment shall be written. Proposal adjustments shall be written. City acknowledgement of the receipt of proposal adjustments shall be written.
- C. The Manager shall present summaries of all acceptable proposals to Council together with his recommendations within fifteen working days following the aforementioned closing date.
- D. The final selection of the best proposal shall be made by Council.
- E. A full commission shall be paid to the broker submitting the successful proposal.

5. A long-term lease may be renewed only with approval by a resolution of the Council. A short-term lease may not be renewed by the City Manager beyond a two (2) year original term with the same lessee without approval by resolution of the Council; provided, however, month-to-month rental agreements may continue for two (2) years without Council approval.
6. Lease term will be established at the minimum necessary to amortize the capital investment required for leasehold development.
7. Lease rents will be based on fair market values whenever the lease purpose contemplates a private or commercial use which does not provide a public service or facility. Market value rents may be waived only in those situations where, and to the degree that, a public service or facility or other valid consideration is provided by the lease. The fair market value of the property will be determined by an independent fee appraiser or a qualified City employee. An independent fee appraisal shall be made within one year preceding Council consideration of the disposition of all properties valued in excess of \$50,000, except for leases to non-profit organizations.
8. Commercial leases in which the rent is based on a percentage of gross income, and leases which are granted for the purpose of furnishing a public service or facility, will provide for adequate bookkeeping and accounting records to be maintained by the lessee and for reasonable inspection of records and operations by appropriate City representatives. All percentage leases will be audited by the City Auditor and Comptroller every two years; however, where economically feasible, audits of percentage lease agreements will be made annually.
9. Leasehold Assignments
 - A. 1. Transfers or assignments of leasehold interests shall be permitted when not contrary to the best interest of the City.
 2. Lease assignments or transfers shall be approved based on the criteria used in granting the original lease.
 3. The personal qualifications, business reputation, financial responsibility and demonstrated management ability of the person or entity seeking to acquire the leasehold will be a consideration for determining whether a transfer or assignment of interest will be approved.

- B. Leases exceeding two (2) years shall not be assigned without approval of the assignment by resolution of the City Council.
- C. City Manager shall make an analysis of the overall consequences of the transaction and report to the City Council, enumerating the anticipated effects of the assignment on the lease in the following respects:
 - 1. Service to the public
 - 2. Operation of lease facility
 - 3. Use of the premises
 - 4. Rental return to the City
- D. Leases of two (2) years or less may be assigned by approval of the City Manager.

10. Subleases

- A. City staff will inform proposed and prospective tenants that requests for subleases will be considered on the merits of the transaction. The City will recognize the right of the tenant to receive a fair return on improvements, other assets or services to which he may be entitled through his operation or investment. However, the City will not condone subleasing which would appear to permit undue profiteering or speculating on the value of the City land.
- B. City Manager shall make an analysis of the overall consequences of the transaction and report to the City Council, enumerating the anticipated effects of the sublease on the lease in the following respects:
 - 1. Service to the public
 - 2. Operation of lease facility
 - 3. Use of the premises
 - 4. Rental return to the City
- C. Subleases for a term exceeding two (2) years shall require approval by resolution of the City Council.
- D. Subleases for terms of two (2) years or less may be approved by the City Manager.
- E. Subleases shall be subordinate to the master lease in all respects.

DIVISION 9
CONTRACTS - LEASES - SALES

SECTION 22.0901 LEASES OF REAL PROPERTY

Except as otherwise provided in the Charter, or by ordinance the Council shall have the power to lease the real property of the City as follows:

No real property belonging to the City shall be leased except in pursuance of a resolution passed by a majority vote of all members of the Council, which shall contain the following:

- (a) the reason for leasing such real estate;
- (b) a description of the real estate to be leased;
- (c) a statement of the market value of such real estate as appraised by an independent fee appraiser. Properties valued under fifty thousand dollars (\$50,000) may be appraised by City staff. The findings of the appraiser together with a review report by City staff shall have been on file with the City Clerk for a period of not less than thirty (30) days preceding the resolution of the Council.
- (d) The document number of a copy of the lease filed in the office of the City Clerk of the City of San Diego for a period of not less than thirty (30) days preceding the resolution of the Council.

No lease shall be made for a longer term than two (2) years except by resolution passed by an affirmative vote of six members of the Council.

Nothing in this section contained shall be deemed to apply to any lease for a term of two (2) years or less. The City Manager, at all times, shall have power, without advertising, notice, or competitive bidding, and upon such terms as he may deem proper, to lease any of the real property of the City of San Diego for a term of two (2) years or less provided, however, that no such lease, so made, shall be renewed without the approval of the Council.

DIVISION 9
CONTRACTS - LEASES - SALES

SECTION 22.0905 BROKER'S FEE AND REGISTRATION

Whenever the City Council by resolution shall have determined to pay a real estate broker's commission (fee) in connection with the lease of City-owned real property as provided in Section 22.0901 or in connection with the sale of City-owned real property as provided in Section 22.0902, the commission payment will be made to the broker who meets all of the following conditions:

- (a) Holds a valid State of California real estate broker's license;
- (b) Represents a client who is willing and able to make a bona fide offer;
- (c) Registers broker's name and address and client's name and address with the City Property Director, together with written confirmation by the client that the broker is authorized to represent him for a specified property: (1) no later than the day preceding the date fixed for the sale, (2) no later than the date of submittal of the lease proposal in response to solicitation for proposals, or (3) no later than the date of the first offer to lease or request to open negotiations to lease; and
- (d) The sale or lease has been fully consummated between the City and the client of the broker as evidenced by an authorizing City Council resolution.

The City of San Diego shall pay a real estate broker's commission not exceeding six percent (6%) of the sale price of the property. The City of San Diego shall pay a lease commission pursuant to the lease commission schedule adopted by resolution of the Council, but in no event shall said commission exceed six percent(6%) of the market value of the property leased.

Provided, further, the City Council shall have the right in every instance to reject any and all bids in any sale or any offer for any lease of City-owned real property without cause or liability and, in the event of such rejection, the City shall not be obligated to pay any broker's fee whatsoever; the intent of this provision is to make the payment of any real estate commission absolutely contingent upon the acceptance of the bid or of the negotiated agreement and the complete consummation of the sale or lease, including, in the case of a sale, receipt by the City of the full purchase price. A broker not registered under the provisions hereof shall not be entitled to a commission from the City. Any dispute between brokers as to which broker is entitled to receive the broker's commission shall be decided by the City Manager, in accordance with recognized real estate industry arbitration procedures as set forth in Title 9, Part 3 of the California Code of Civil Procedure. If a commission is due and payable to any real estate broker as provided herein, the City shall pay the same out of the money received as the purchase price of the property sold or out of the money received as lease payments.

THE CITY OF SAN DIEGO
SCHEDULE OF LEASE BROKERAGE COMMISSION

Payment of Real Estate Broker's Commission for leasing of City-owned real estate in accordance with Municipal Code Section 22.0905, BROKER'S FEE AND REGISTRATION; the amount of commission and payment shall be as follows:

A. Gross or Net Leases

1. Term of Less than five (5) years.

6% of the total rental for the 1st 12 months
5% of the total rental for the 2nd 12 months
4% of the total rental for the 3rd 12 months
3% of the total rental for the 4th 12 months
2% of the total rental for the remaining months

2. Term of five (5) years through twenty-five (25) years or more

4% of the total rental for the 1st 5 years
2% of the total rental for the 2nd 5 years
1 1/2% of the total rental for the remainder of the term up to 25 years

B. Month-to Month Tenancy:

The commission rate in this instance shall be 50% of the first month's rent.

C. Percentage Rental:

As to any leases which contain a percentage rent clause, City shall pay a commission on the percentage rent at the same rate as applicable for the minimum guaranteed rent as above provided. This commission shall be due and payable within thirty (30) days after the Lessee's final payment and accounting of percentage rental for the preceding lease year. At the end of the third full lease year there shall be a settlement as to any commission due on percentage rental for the remainder of the original term, not to exceed twenty-five (25) years, of the lease calculated upon the assumption that the percentage rental for each year of the remainder of the term will be the same as the percentage rental for the third full lease year.

D. Payment of Lease Commission:

Commission shall be due upon execution of a lease and all lease revenue from the new contract received by City shall be paid within thirty(30) days after receipt by City to Broker as commission until such time as the commission is paid in full.

E. Extension of Lease or Additional Space Taken:

An additional lease commission will not be paid should the term of the lease be extended, renewed, or amended.

Notwithstanding any of the foregoing, in no event shall the amount of any commission exceed 6% of the fair market value of the leased property as appraised in accordance with Municipal Code Section 22.0901, LEASES OF REAL PROPERTY, prior to City's execution of the lease agreement.

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<u>Subject</u>	<u>Policy Number</u>	<u>Effective Date</u>	<u>Page</u>
DISPOSITION OF CITY-OWNED PROPERTY IN OPEN SPACE ACQUISITION SITES SAN DIEGO, CALIF.	700-29		1 of 1

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BACKGROUND

In recent years, the public has displayed an increasing interest in the acquisition of canyon lands as open space sites. Many of these sites contain property which is owned by the City and which is not being used in the course of normal governmental functions. These lands are held in trust for all the citizens of San Diego and donation of land to a specific project constitutes a contribution of public funds to that project.

PURPOSE

A policy is therefore required to guide the staff in their discussions with property owners concerning the disposition of such City-owned property and the compensation, if any, the City should receive should the land be committed to open space.

POLICY

1. It is the policy of the Council to require, with exceptions listed below, that the City be compensated for the inclusion of City-owned property in an open space acquisition project. Such compensation should be fixed at the fair market value established by an independent fee appraisal.
2. Where the acquisition is clearly in the interest of the general public, the donation of City-owned property in lieu of a cash contribution may be authorized; as provided in Council Policies 700-7 and 700-31. Normally, the amount of the contribution will be established without regard to the value of the land and if the land value should exceed the amount of the contribution, the excess should be reimbursed to the City.
3. This policy shall not apply to any City-owned land which is:
 - a. Used, or designated for future use, pursuant to a governmental function, or,
 - b. Owned by the Water Utilities Department of the City.

DOCUMENT NO. 750778
 FILED APR 10 1975
 OFFICE OF THE CITY CLERK
 SAN DIEGO, CALIFORNIA

Passed and adopted by the Council of The City of San Diego on APR 4 1975,
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Maureen F. O'Connor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By Patricia Pelem, Deputy.

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Office of the City Clerk, San Diego, California

Resolution Number 212957 Adopted APR 4 1975