

DATE ISSUED: March 21, 2001

REPORT NO. 01-058

ATTENTION: Natural Resources & Culture Committee
Agenda of March 28, 2001

SUBJECT: Leasing and Disposition of City-owned Property to Non-profit Organizations

SUMMARY

Issues - Should the NR&C Committee recommend that the current Council Policies 700-4, 700-8 and 700-12 be amended to include specific procedures, guidelines and rental rates to implement a more equitable policy of leasing and selling City-owned property to non-profit organizations?

Manager's Recommendations -

1. Recommend staff seek input from stakeholders groups prior to finalizing amendments to Council Policies 700-4, 700-8 and 700-12 to provide consistent procedures and minimum rental rates then return to the Mayor and City Council.
2. Recommend staff develop a Grant Solicitation Packet and Resource Guide for distribution to prospective non-profits.

Other Recommendations - None.

Fiscal Impact - If all non-profits paid fair market rent staff estimates the City would receive approximately an additional \$2,000,000 annually. City staff costs to administer the non-profit leases equals in excess of \$200,000 annually. Maintenance costs for City facilities occupied by non-profits is mostly absorbed into Facilities Maintenance Division's budget.

INTRODUCTION

In addition to providing recommendations on how the City can provide more uniform assistance to non-profit organizations, one of the purposes of this report is to provide information as to the level and nature of subsidies already granted. Attachment D provides a current list the City's non-profit lease agreements. Another purpose is to solicit policy direction regarding staff's proposed approach to improving the process of responding to requests from non-profits through specific procedures and guidelines which are currently lacking. Staff has developed Attachment E which includes these proposed procedures. The

objective is to more equitably implement Council Policies 700-4, 700-8, and 700-12, resulting in a more level playing field for all non-profits.

BACKGROUND

Currently, there are three Council Policies which govern the disposition of City-owned property to non-profit organizations:

- 700-4- Balboa Park Uses and Occupancy
- 700-8- Mission Bay Park Policies
- 700-12- Disposition of City property to non-profit organizations

Last year, the Zero Based Management Review Committee (ZBMR) performed a complete review of the Real Estate Assets Department including the management of City leases and the related policies. The one area that ZBMR identified as needing the most improvement was the application of CP 700-12. The ZBMR Report stated that “there have been substantial deviations in the application of the City Council’s Policy 700-12 since its inception in 1985, and that these variations in administration have generally not been in the best interests of the City.”

In almost all other cases, the City adheres closely to the Council Policies. Council Policy 700-12 establishes criteria for two narrow exceptions to charging market based rent:

1. Available City property shall be leased at fair market value to non-profit organizations when it is deemed by Council that appropriate public benefit will be derived. However, the City may lease property purchased with CDBG funds to organizations that primarily provide services to low-income persons at a nominal fee determined by the City and Agency.
2. The only discount, excepting CDBG purchased property, in the land rental rate which will be considered is that which will be a direct offset to City expenditures. An example would be where the non-profit organization is constructing and operating a facility to provide a service that would otherwise be a recognized obligation of the City to provide. These criteria have never been consistently applied. Of the 113 existing non-profit leases, 74 pay no rent and another 11 pay less than \$1,000 per year.

The ZBMR Report also recommended that the “Leases should, to the greatest extent possible, specify that the lessee is responsible for all maintenance. This provision should apply to all non-profit leases as is specified in line 6 of Council Policy 700-12. The Council’s policy needs to be reviewed and specific control mechanisms installed which eliminate 50-year leases and substantially restrict the situations where no income leases are allowed.”

The ZBMR Report focused on the loss of City revenue and escalating expenses in three areas: lost rental income, maintenance costs for City facilities occupied by non-profits and administrative costs managing the leases. Staff estimates that the City would be receiving approximately \$2 million annually if all of the non-profit leases paid market rents. Actual

staff costs exceed \$200,000 annually for lease administration. This does not include negotiation of new leases and renewals which is substantially more labor intensive. Maintenance costs for these facilities are mostly absorbed by Facilities Maintenance Division and continues to escalate annually.

DISCUSSION

In response to these findings, the Real Estate Assets Department formed an internal Nonprofit Committee. The Nonprofit Committee conducted extensive research into the non-profit policies of over a dozen major western cities. Seattle's non-profit policies and procedures provided a comprehensive and thoughtful approach which incorporated many of the positive elements the of other cities. Seattle's approach establishes a specific value for the services provided to the community, then offsets that value against a market based rent. The Nonprofit Committee adopted Seattle's approach as a template because it addresses the following issues:

1. Ensuring that the Mayor, the Council and the public are informed of the extent and nature of non-profit subsidies;
2. Ensuring that all non-profit tenancy applicants have equal initial access to the City's review process, and that the value of their proposal is objectively measured using the same set of standards;
3. Establishing a follow-up procedure to ensure that valuable services continue to be received.

The Nonprofit Committee concluded that all three of our Council Policies are lacking procedures for consistent application that the Seattle template could provide. Our recommendation is to amend the three Council Policies to include specific procedures and uniform minimum rental rates by use category.

So that the City's Nonprofit Policy becomes more impartial in its application, the amended Council Policies should accomplish the following objectives:

1. Establish a Nonprofit Evaluation Committee to consider requests which includes both City staff and independent outside members (e.g. San Diego Foundation, Real Estate Advisory Committee, etc.). The value of the proposed service should be measured and prioritized in terms of the City's needs, obligations and overall benefit to the citizens. This will establish equal initial access to City assets.
2. Develop tenant categories with minimum rental rates so that the Mayor, Council and citizens know what types of subsidies are being provided to non-profit tenants. This will enable the subsidies received by non-profits to be equal and consistent.
3. Maintain a resource library to provide non-profit organizations access to other funding sources including but not limited to grants, foundations and CDBG funds. Develop a Grant Solicitation and Resource Guide to distribute to non-profits.

4. Develop a stringent follow-up audit procedure to ensure that valuable services continue to be received.

Balboa Park

Balboa Park leases are governed by Council Policy 700-4. In addition to the application and review procedures, staff recommends adopting some of the other suggestions provided by ZBMR including tenant responsibility for building maintenance. Many of the existing leases contain cumbersome attachments which split responsibility between the tenant and the City for building maintenance. Many of the leases also state that lack of budgeted funds relieves the City of this responsibility. The lack of funding for adequate maintenance of City facilities is exacerbated when the facilities leased to non-profit agencies are included with the more than 1400 City facilities currently maintained. The City's ability to maintain existing facilities as well as the tenants will benefit by ensuring that all new leases require the tenants to bear responsibility for all interior and exterior maintenance. First, they will have more control for budget and planning purposes and second, they can conduct capital campaigns without having to segregate projects based upon this artificial list. In addition, City staff and the non-profit organizations should develop better coordination and partnering on expansion and improvement projects. City staff will request each organization provide a list of proposed projects on an annual basis to facilitate this coordination. Another recommendation worth considering is exploring the possibility of obtaining a nominal percentage of certain revenue generating activities (special events, gift shops, food service, etc.) which could be used for maintenance and repair of Balboa Park facilities. In addition, ZBMR recommended a "user fee" or a ticket surcharge to help fulfill this purpose. This also warrants further exploration and discussion with stakeholders.

Mission Bay

Regarding Council Policy 700-8 governing Mission Bay Park, staff recommends retention of the rental formula of 33.3% of the average commercial rate paid by non-profits. Staff also recommends considering increasing this percentage over time for long-term leases.

However, providing this same subsidy for yacht clubs cannot be justified based upon the services provided to the community. In addition, the exemption for "education institutions" which pay no rent in Mission Bay should be eliminated and these organizations should be treated as non-profits. All of the other guidelines outlined should also apply.

RECOMMENDATIONS

1. Recommend staff seek input from stakeholders groups prior to finalizing amendments to Council Policies 700-4, 700-8 and 700-12 to provide consistent procedures and minimum rental rates then return to the Mayor and City Council.
2. Recommend staff to develop a Grant Solicitation Packet and Resource Guide for distribution to prospective non-profits.

Respectfully submitted,

William T. Griffith Approved: Bruce Herring
Real Estate Assets Director Assistant City Manager

GRIFFITH/JAB-sd

Note: Attachments A, B, and C are not available in electronic format. A copy of the attachments is available for review in the Office of the City Clerk.

Attachments: A. Council Policy 700-4
B. Council Policy 700-8
C. Council Policy 700-12
D. Nonprofit Lease Agreements
E. Application for Nonprofit Lease Agreement
F. Minimum Rent - Nonprofit Organizations Draft