

RESOLUTION NO. 4441

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING THE DRAFT POLICY FOR REAL CITY PROPERTY ASSET
MANAGEMENT FOR LEASE AGREEMENTS AND SALE OF SURPLUS
PROPERTIES.**

WHEREAS, staff conducted a comprehensive study of standard policies and procedures pertaining to City owned property lease agreements; and

WHEREAS, the policy sets forth the process to determine if City-owned real property is surplus to City needs and whether such property should be sold or leased; and

WHEREAS, the policy establishes the procedures to be used in the process of selling or leasing City-owned real property; and

WHEREAS, the policy outlines criteria for approving lease agreements of property for telecommunication purposes; and

WHEREAS, the policy demonstrates that the standard practice for ascertaining the appropriate rental rates per property are established by conducting comparative Market Analysis of three (3) Sources; and

WHEREAS, the standard practice for setting lease rates for below Fair Market value is determined by evaluating the services being offered by the Tenant to the City and in what regard those services benefit the community.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the City Council of the City of Soledad hereby approves the draft policy for real city property asset management for lease agreements and sale of surplus properties, attached hereto and made a part thereof as "Exhibit A".

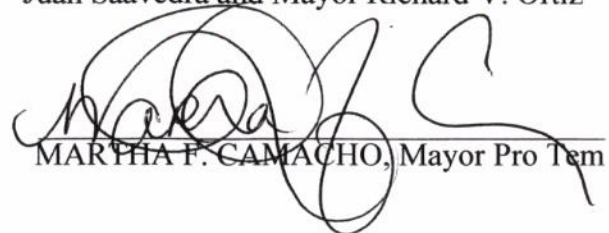
PASSED AND ADOPTED by the City Council of the City of Soledad at a regular meeting duly held on the 4th day of November 2009 by the following vote:

AYES, and in favor thereof, Councilmembers: Richard J. Perez, Patricia Stephens, and Mayor Pro Tem Martha F. Camacho

NOES, Councilmembers: None

ABSTAIN, Councilmembers: None

ABSENT, Councilmembers: Juan Saavedra and Mayor Richard V. Ortiz


MARTHA F. CAMACHO, Mayor Pro Tem

ATTEST:


ADELA P. GONZALEZ, City Clerk

EXHIBIT A

CITY OF SOLEDAD REAL PROPERTY ASSET MANAGEMENT POLICY

Subject: City Real Property Asset Management

Purpose

The purpose of this policy is to establish guiding principles for the management of City-owned real property. The policy sets forth the process to determine if City-owned real property is surplus to City needs and whether such property should be sold or leased. The policy also establishes the procedures to be used in the process of selling or leasing City-owned real property.

Background

Increasing demand for City services, combined with increasing demand for discretionary revenue, requires intensified utilization of City properties and a more aggressive approach in managing these assets.

Periodically, the City has properties which must be retained for long-term public use that may be available for interim private use. In other instances, the combination of public ownership/investment and private operation may be best for the public's interest.

For purposes of this Policy only, the terms "surplus," "surplus property," "surplus real property" collectively shall mean any City owned real property that (i) is identified and deemed to be in excess of the City needs; and (ii) is not required for any foreseeable City use.

Policy

It is the policy of the City to return to other public agencies or to the private sector that surplus real property which is no longer needed by the City for public facilities and programs. Whole properties are occasionally acquired when only portions are to be utilized for proposed public roads or other projects. The City attempts to sell or lease the unneeded portions of the acquired properties and other surplus properties for the highest net return to the City. However, property which is substandard or zoned for a use which is incompatible with the surrounding neighborhood will not be sold or leased until appropriate zoning entitlements are in place

It is the policy of the Council that:

1. Surplus Property Determination and Reports to Council
 - i. On an annual basis, the City Manager shall solicit input from City Departments to identify potential surplus property.
 - ii. As circumstances warrant, the City Manager shall determine what property is surplus to City needs. This determination shall be based on current City Master Plans and individual department's strategic plans relative to the City's financial ability to develop and effectively utilize the particular properties within a reasonable time frame. Prior to final determination of which properties are surplus to City needs, the City Manager shall review the City's occupancy of leased space and lease termination dates to determine if property identified as surplus may be suitable for the relocation of City tenants from leased to owned space. Further, prior to final determination that

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is surplus to City needs, the City Manager, in conjunction with appropriate departments, shall consider the habitat value of the property.

- iii. The Department of Public Works shall maintain a list, updated no less than annually, that identifies real property that is considered surplus to City needs. In addition, the Director shall:
 1. Periodically circulate this list to City department heads as updates are made.
 2. Incorporate, as appropriate, plans to lease, sell, or redevelop surplus real property into the Capital Improvement Plan filed annually with the Council.
 3. As circumstances warrant, request a finding of the Council, through reports filed by the City Manager, that individual parcels of real property are surplus to City needs, and include a recommendation as to whether the surplus property should be leased or sold.

2. Lease of Surplus City Real Property

- a. It is the City's intent to properly utilize surplus properties through development of lease revenues for public benefit, or to sell such properties to the private sector, or another public agency, when no current or prospective City use is envisioned.
- b. Whenever joint or multiple uses of public and private interests are compatible, the production of lease revenue will be considered as an ancillary or supplemental use of property.
- c. Leases of City property shall be offered without favor or discrimination to all individuals or groups capable of performing the services desired under the lease. A public solicitation process that considers the available market and interest shall be undertaken. The City Manager shall implement this process, which must include advertising commensurate with the most effective method of reaching prospective lessees and as prescribed by law.
- d. The City may pay a real estate brokerage commission for the lease of surplus City real property when it is deemed advisable that the assistance of a real estate broker may cause a property to lease at a higher price, lease sooner, or when the property's unique characteristics precludes handling the lease by staff alone.
- e. When all proposers are responsible and equally qualified to meet the use and/or development objectives of the lease under consideration, the highest net return to the City shall be the basis of selection. In other circumstances, and where it is not required by law that the property be leased to the highest bidder, the Council may approve a request for proposals process that utilizes a variety of selection criteria appropriate to the intended use of the property.
- f. Leases containing holdover or indefinite term provisions shall include an inflation provision to provide increased rent during the extended period.
- g. Revenue from the lease of General Fund properties will be budgeted in the Internal Service Fund. Revenues from leasing of property that is managed by RDA or other special funds will be budgeted in their respective programs.

- h. A rental valuation review shall be completed for City-owned or leased land and improvements available for lease. Such reviews shall be done at the time property becomes available for lease and at appropriate time periods consistent with best real estate management practices.
- i. The standard practice for setting lease rates is to use Fair Market Value (FMV) estimates. An estimate of Fair Market Value is usually subjective due to the circumstances of place, time, the existence of comparable precedents, and the evaluation principles of each involved person. Opinions on value are always based upon subjective interpretation of available information at the time of assessment.
 - ii. The policy demonstrates that the standard practice for ascertaining the appropriate rental rates per property are established by conducting comparative Market Analysis of three (3) Sources;
 1. Reviewing three (3) similar properties in the direct vicinity.
 2. Contact local Real Estate agencies for current Market Rates of comparative properties.
 3. Reviewing local classified sections of newspapers for market comparison.
 - iii. The standard practice for setting lease rates for below Fair Market value is determined by evaluating the services being offered by the Tenant to the City and in what regard those services benefit the community. Specifically, how many people use the service, what kinds of services are being offered, what is the value of the services, and what does the service accomplish?
 - iv. When estimating lease rates, it is standard practice to calculate "Rental Square Footage".
 - a. Usable square feet is the number of square feet that a tenant actually occupies. But there are other parts of the building that all tenants use or benefit from (e.g. common areas).
 - b. The amount of square feet for common area spaces is divided among all tenants on a prorated basis. Each tenant pays a portion of the rental rate expenses for these common areas.

Square Foot Calculations

Definitions of Square Feet (SF)	
Term	Definition
Usable Square Feet	SF of space actually occupied by the tenant.
Rentable Square Feet	Usable SF + a % of SF of the Common Areas.
Gross Square Feet	Total SF of the entire building.

- i. Lease terms shall generally be limited to a reasonable time commensurate with the amount of capital investment or reinvestment being made by the lessee in improvements to the premises or property. Capital investment is defined as construction of new

improvements, alterations, or additions that (i) exceed \$100,000, or exceed 10% of the value of any existing leasehold improvements; (ii) are not recurring; and (iii) are expected to increase the value (efficiency, productivity, utility) of the property. For improved property, where no capital investment is required of or proposed by a prospective lessee, fixed lease terms will be granted for periods in keeping with industry standards for the type of improvements and the intended use of the property.

- j. Leases with a term exceeding 10 years in length shall provide for renegotiation of rent to market level at appropriate intervals in keeping with industry standards. Interim cost-of-living adjustments shall also be provided in between market-level adjustments at appropriate intervals in keeping with industry standards. In no event, shall the minimum rent for the adjustment period be less than the minimum rent payable immediately prior to the adjustment period.
 - k. All City leases shall be written on a form approved by the City Attorney and shall, at a minimum, conform to local/regional standards of tenant responsibility and liability. City leases may contain more restrictive clauses than private sector leases to better protect the public interest (such as, strict provisions for complying with all laws, particularly environmental laws such as hazardous materials management and stormwater pollution prevention regulations).
 - l. A lease extension may be granted to a tenant who has fully complied with all terms and conditions of the lease if granting an extension would be in the best interests of the City and the City Manager concurs. Factors to be considered in determining the terms of a lease extension shall include the following:
 1. New capital investment as described in "i" above, if appropriate;
 2. Whether the public interest would be better served by allowing the lease to expire so that potential new tenants may participate in a new competitive solicitation process; and
 3. An increase in rent, or lump sum payment to the City, based on the higher of:
 - i. The present value of the City's reversionary interest in the leasehold improvements when the lease extension is granted; or
 - ii. An amount equal to 50% of the increased value of the leasehold estate due to the lease extension, as determined by standard appraisal practice.
3. Lease policy for City-owned properties utilized for Telecommunications purposes.

The City Manager or delegate will determine consideration of a lease agreement for Telecommunication use by the following criteria:

- a. Need for telecommunications facility demonstrated by the applicant.
- b. Compliance with zoning regulations and other legal requirements.
- c. Location:
 - a. Is the site compatible with City operations?
 - b. Is the site compatible with neighboring property and land uses?
- d. Aesthetics (size/nature of equipment and buildings).
- e. The feasibility of screening or camouflaging the equipment (if needed).
- f. Such other information as necessary given the location and size/nature of the equipment.

4. General Prerequisites for Sale of Surplus Property

- a. No property will be sold until an estimate of its fair market value has been made. The City Manager or delegate may hire independent appraisers for this.
- b. City-owned surplus properties available for sale shall be zoned to their highest and best use whenever practicable and whenever such zoning will materially increase chances of selling the property for a higher price. No surplus property shall be zoned in a manner incompatible with present and anticipated future uses of adjacent properties in the same neighborhood. Current zoning of surplus properties may be changed to a more restrictive use.
- c. If subdivision of the property will likely increase the net sales price to the City, the City may subdivide its surplus property prior to sale
- d. Prior to selling a property, a report shall be obtained from the Community Development Department that the proposed disposal is not in conflict with the general plan for the area in which the property is located.
- e. Appropriate governmental entities shall be notified of the surplus property's availability, prior to offering it for sale to the general public.
- f. No property shall be sold without an appropriate review pursuant to California Environmental Quality Act.
- g. Substandard or unbuildable property is offered for sale upon a demonstrated interest of a party who can put the property to productive use. A potentially non-refundable cash deposit may be required where the City will undergo substantial overhead in making the property available for sale.

5. Property Conveyed to another Public Agency

Whenever the City conveys property or any interest therein to another public agency for its use and benefit, the City shall charge a reasonable amount for the property or interest being conveyed. In determining the amount to be charged, the City shall give consideration to the following factors:

- a. The market value of the property or interest therein, if ascertainable; and
- b. The benefit or cost to the City as a result of:
 - 1) The use to be made of the property or interest therein by the public agency;
 - 2) The elimination or reduction of any City liability and/or obligation to maintain or operate the property;
 - 3) The effect on the City's remaining property, if applicable; and
 - 4) The potential loss of property tax revenue to the City.

6. Solicitations of Offers to Purchase

- a. The City Manager or delegate is authorized to enter into agreements permitting soil tests, engineering studies, hazardous materials investigations, or environmental surveys when a

request has been made by a potential buyer of City surplus property. Such authorization will enable the Director, Department of General Services to more expeditiously solicit Offers to Purchase.

- b. The City may pay a real estate brokerage firm for the sale of City surplus real property when it is deemed advisable that the assistance of a real estate broker may cause a property to sell at a higher price or when the property's unique characteristics precludes handling of the sale by staff.
- c. In addition to advertising mandated by law, surplus property to be sold shall be advertised for sale in the manner most likely to reach the largest number of potential buyers. Appropriate "For Sale" signs shall be posted on properties. The advertising period shall be of sufficient duration to attract buyers for properties to be sold. Special marketing programs utilizing a Request for Proposal process shall be prepared and implemented for unique properties where the normal bid process may not be appropriate.

7. Sale of Surplus Property by the City.

- a. Sales may either be conducted by the City Manager or delegate.

Sunset Date

This policy will be reviewed for continuance by (DATE)

Council Action

City Manager Reference

2. Department of Public Works