

ORDINANCE NO. 28803

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.04.020 OF CHAPTER 4.04 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AND EXECUTE LEASES NOT EXCEEDING \$250,000 IN RENTALS WHETHER THE CITY IS A LESSOR OR LESSEE AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS PERTAINING TO THE SALE OF SURPLUS PROPERTIES IF THE SALES PRICE DOES NOT EXCEED \$250,000, THE PROPERTY DOES NOT EXCEED ONE HALF ACRE IN SIZE, AND ALL OTHER APPLICABLE PROVISIONS OF CHAPTER 4.20 ARE MET; AND AMENDING CHAPTER 4.20 OF TITLE 4 TO ADD A NEW SECTION 4.20.010 PERTAINING TO DEFINITIONS, AND FURTHER AMENDING SECTIONS 4.20.020 TO ADD TYPES OF NOTICES OF SALES AND PRICE; 4.20.030 TO SPECIFY THE CONDITIONS FOR DIRECT NEGOTIATIONS FOR SALE OF SURPLUS PROPERTY; 4.20.040 TO AUTHORIZE COMPETITIVE PROCESSES FOR SALE IN ADDITION TO AUCTION; 4.20.070 TO MODIFY THE CONDITIONS UNDER WHICH PROPERTY MAY BE SOLD TO THE ADJACENT PROPERTY OWNER AND RENUMBERING ALL REMAINING SECTIONS OF CHAPTER 4.20 WITHOUT FURTHER MODIFICATIONS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code, is hereby amended to read as follows:

4.04.020 Contract Authority of the City Manager

- A. The City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council, any contract, for which:

1. Moneys have been appropriated; and
2. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and
3. The total monetary value expended or received by the City does not exceed the amount listed below with respect to the type of contract:
 - a. Emergency purchases pursuant to Section 4.12.220 regardless of the amount expended;
 - b. Agreements for the lease or purchase of supplies materials and equipment including the delivery thereof, having a maximum value of One Million Dollars (\$1,000,000.00);
 - c. Agreements for services, other than professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms, having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000.00);
 - d. Agreements relating to the grant of funds to or from the City and agreements for the acquisition of public artwork having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000.00);
 - e. Sponsorship agreements (as described in Section 4.04.010 A.7) having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000.00), each with a term not exceeding three (3) years, and which otherwise comply with City Council policy;

- f. All other types of contracts having a maximum value of One Hundred Thousand Dollars (\$100,000.00).

B. In addition, the City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council the following:

1. Any contract for the payment of fees imposed on the developer of a residential project pursuant to Chapter 14.25 or Chapter 19.38 of this Code;
2. Leases of property where the City is a lessee or lessor, where the rental payments do not exceed a cumulative total of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
3. One or more amendments to a lease, where City is a lessee or lessor, for the purpose of undertaking a cumulative total of no more than One Hundred Thousand Dollars (\$100,000.00) in improvements to the leased property over the term of the lease, including option periods;
4. Tenant estoppel certificates on behalf of the City, where City is a landlord, tenant or subtenant under an existing lease;
5. Agreements for the purchase or donation of fee interests in real property or for the grant of easements to the City, and all documents necessary to complete the purchase, where:
 - a. The real property or the easement is being acquired in order to implement a project approved by the City Council; and

- b. The grant of easement or acquisition of real property has been determined to present no significant toxics liability; and
 - c. The compensation to the seller of the real property or grantor of the easement does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) and all costs of purchase and additional costs of escrow and closing are lawfully available in accordance with Subsections 4.04.020 A. 1 and 2 above.
6. Temporary construction easements for terms not exceeding two (2) years where the City is grantor or grantee and the compensation for the temporary construction easement rights does not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00);and
7. Agreements for the sale of fee interests in real property where:
- a. The real property has been declared surplus to the needs of the City by the City Council as provided in Chapter 4.20; and
 - b. The process for conducting the sale is approved by the City Council in advance of the sale and otherwise complies with the provisions of Chapter 4.20; and
 - c. The real property to be sold does not exceed one-half acre (21,780 square feet) in size; and
 - d. The sales price, including all costs of escrow, does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085).

- C. No provision of this Chapter is intended to limit the authority of the City Manager or any Council appointee from seeking approval of a specific action by the City Council, nor is it intended to limit the authority of the City Council to place limitations on the City Manager's or other Council appointee's authority with respect to entering into specific contracts.

SECTION 2. Chapter 4.20 of Title 4 of the San José Municipal Code is hereby amended in its entirety, to be numbered, entitled and to read as follows:

CHAPTER 4.20
PROCEDURE FOR SELLING CITY-OWNED PROPERTY

4.20.010 Definitions

The definitions set forth in this Section shall govern the application and interpretation of this Chapter.

A. Auction

“Auction” means a publicly held sale conducted after public notice as specified in Section 4.20.020 below, at which sale surplus property is sold to the highest bidder, on terms and conditions as Council may direct and set forth at the time of such public notice.

B. City Manager

“City Manager” means the City Manager or his or her designee.

C. Competitive Sales Process

“Competitive sales process” means a procedure for the sale of surplus real property by the City that provides public notice of the availability of surplus property for sale, and is any one of the following methods for sale:

1. an auction; or
2. a request for competitive proposals; or
3. a bid and negotiation; or.
4. offering the property through the use of a duly licensed real estate broker selected in accordance with City’s policies for hiring of consultants and applicable state and local laws pertaining to conflicts of interest, and the broker offers the property for sale pursuant to a marketing plan approved in writing by the Director.

D. Director

“Director” shall mean the director of the City department designated by the City Manager to dispose of surplus real property.

E. Fair Market Value

“Fair Market Value” means the most probable price expressed in terms of money that a property would bring if offered for sale in the open market at an arm’s length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the property is adapted and for which it is capable of being used.

F. Notice of Public Sale

“Notice of public sale” means a notice of intended sale published beginning at least three (3) weeks prior to the date of sale, for no less than three (3) days, in a newspaper of general circulation in the City, which notice states the terms and conditions of the sale. In addition, but not as a substitution for the publication in a newspaper of general circulation in the City, public notice may also be given by any other means available, including but not limited to posting on the City’s website, posting a notice on the property to be offered for sale, use of a multiple listing service, email lists of potential interested parties, or such other electronic means as may be developed from time-to-time. A notice of public sale precedes a proposed sale but shall not substitute for any public notice required to place the proposed approval of a sale on an agenda of the City Council.

G. Surplus Real Property

“Surplus real property” means municipally owned real property that the City Council has authorized to be sold or exchanged based upon its finding and determination that any such real property is not needed for, nor adaptable to, municipal purposes, and that the public interest would be served thereby.

4.20.020 Sale of Real Property– Requirements for Notice of Sale and Price

A. Except as otherwise provided by Charter and this Chapter, and except as to the sale of Pueblo Lands for which a special procedure is provided for in Section 4.20.090, all sales of surplus real property shall be sold by a competitive process at fair market value, after notice to the public as provided in Section 4.20.010 (F), upon Council finding and determination that any such real property is not needed for, nor adaptable to, municipal purposes, and otherwise upon such terms and conditions as the Council may direct.

- B. The time of said sale shall in no case be earlier than three (3) weeks from the first day of public notice or for a period of not less than three (3) weeks from the date that electronic notice was given, whichever is greater.
- C. In the event that the City establishes a value for the property below which no sale of the property would be approved, that value shall be included in any notice of sale of the property.
- D. The City may reject any offers it receives to purchase surplus real property, whether by auction or otherwise, for any reason.

4.20.030 Direct Negotiations for Sale of Property

A sale of surplus real property may be made by direct negotiations under those circumstances set forth in Sections 4.20.050, 4.20.060, 4.20.070, 4.20.080, 4.20.090, 4.20.100 and 4.20.110 of this Chapter 4.20.

4.20.040 Competitive Process Required

- A. All sales of real property, except otherwise permitted in this Chapter, shall be at public auction. The City Manager may auction property declared surplus by the Council without Council approval of an alternative competitive process for sale of surplus real property.
- B. The Council may approve an alternative competitive process to an auction for the sale of property it has found to be surplus real property upon a determination that an alternative competitive process will provide the greatest public benefit. Such a determination may be made at the time that the Council declares property surplus and authorizes its disposition. The purchase price for such surplus property shall be the fair market value, unless the City Council determines that a

public purpose will be served by the sale of the property at less than its fair market value.

4.20.050 Conveyance by Exchange

In any case where the City Council determines to convey City-owned real property for a consideration which consists wholly or partially of other real property, said conveyance may be made at private sale, without notice, subject however, to such terms and conditions, if any, as the Council may in its discretion provide.

4.20.060 Surplus Real Property Acquired by Gift

Whenever title to any real property was acquired at no cost or expense to the City, the Council may order that title to any portion thereof that is surplus be conveyed without consideration to the person or persons, or their heirs, grantees, assigns or legal successors in interest, from whom title thereto was acquired by the City; provided, however, that title to the real property adjoining or abutting said surplus real property of the City is currently vested in such person or persons, or their heirs, grantees, assigns or legal successors in interest, at the time of such order.

4.20.070 Sale of Surplus Real Property and Buildings to Adjacent Property Owner

- A. Surplus real property for which the City has paid or given consideration of any kind may be sold to the owner or owners of property adjacent to such surplus City property through direct negotiation at the fair market value of such real property, without notice, when such real property is independently developable and would significantly enhance development potential to the adjacent property pursuant to Title 20 of this Code as it may be amended from time to time.

- B. Surplus real property for which the City has paid or given consideration of any kind may be transferred through direct negotiation with the adjacent property owner for nominal consideration where the Council determines that:
1. The property is not usable for a municipal purpose;
 2. The property is not independently developable and would not significantly enhance the development potential of the adjacent property pursuant to Title 20 of this Code as it may be amended from time to time; and
 3. The conveyance demonstrably reduces the expense of ongoing maintenance for the property.
- C. The sale or transfer through direct negotiation with the adjacent property owner or owners shall otherwise be subject to the terms and conditions as the Council may in its discretion provide.
- D. Whenever any surplus building has been acquired from a person being or having been displaced by a public project, the City Manager shall have authority to sell such surplus building to the person being displaced, without notice, subject to the following:
1. The sale price of the surplus building shall be at fair market value;
 2. The building shall be removed within the time and under the conditions which the City Manager determines are necessary to complete the public project.

4.20.080 Conveyance of Property to Government Bodies, Public Utilities, and Certain Nonprofit Corporations

- A. For purposes of this Section, the term "nonprofit corporation" means any entity which would qualify as such under the Federal Internal Revenue Code.
- B. The City Council may convey, at a private negotiated sale, any City-owned property to any of the entities listed in this Section upon such terms and conditions, if any, as the City Council may in its discretion provide:
1. To the United States Government or any of its departments or agencies;
 2. To any other governmental or public agency;
 3. To any public utility;
 4. To any nonprofit corporation whose purpose is to provide housing for low and moderate income families;
 5. To any nonprofit corporation whose members or directors are subject to the approval of the City Council and whose sole purpose is to assist the City in financing improvements to be leased or sold to the City;
 6. To any other nonprofit corporation engaged in programs or projects which provide a direct benefit to the residents of the City.

4.20.090 Sale of Pueblo Lands -- Procedures -- Form of Application to Purchase

- A. All applications for the purchase of Pueblo Lands of the City shall be made in writing, giving an accurate description of the land applied for, and in the following form:

“Notice of application for the purchase of City Lands. Notice is hereby given that the undersigned will apply to the City Council of the City of San Jose, at its meeting to be held on the _____ day of _____, 20_____, for the purchase of the following described parcel of land, the same being part of the Pueblo Lands of said City, and described as follows: (Description of land.) Containing about _____ acres of land, when any and all persons interested may appear and contest said application. (Signed and dated.)”

- B. Said application shall be filed in the Office of the City Clerk, provided that whenever an application is made for the purchase of any of the lands of the City lying without the corporate limits thereof, the party applying, at the time of filing his application for the purchase of such lands, shall file with the City Clerk an accurate survey and plot of the land applied for, showing the course and distance of each line, the number of acres contained in the tract applied for, and the names of the owners or occupants of the adjoining lands; and provided, further, that all surveys shall conform to the general lines in such manner as not to leave gores or fractions between surveys, and shall be made and certified to by some competent surveyor, to be designated by the City Council, or by the County Surveyor of Santa Clara County.
- C. Upon the filing of an application for the purchase of land, as heretofore provided, it is the duty of the City Clerk to furnish to the party presenting the same a copy of said application, to which he shall attach a certificate in the following form:

"I hereby certify that the above is a correct copy of an application duly filed in the office of the City Clerk of the City of San Jose, this _____ day of _____, 20_____, City Clerk,"

which said certified copy of such application shall be published in some newspaper printed and published in the city for at least three weeks before the same shall be acted upon by the City Council, and written or printed copies thereof shall be posted in two (2) or more of the most conspicuous places upon the land applied for, for at least fifteen (15) days previous to the time fixed for the hearing of such application before the City Council. Proof of such publication and posting shall be made by the affidavit of the applicant.

- D. All applications for the purchase of City lands shall be referred to the City Attorney, and the applicant shall furnish him an abstract of title. If the report of the City Attorney be favorable, and no good cause be shown to the contrary, an ordinance shall be passed fixing the price of the lands to be conveyed, where any charge thereof is intended to be made, and authorizing the City Manager, on behalf of the City, to sign and acknowledge a quitclaim deed of the premises mentioned in the application, to which shall be attached a certified copy of the ordinance authorizing the sale. Said deed shall be delivered to the applicant upon the payment to the clerk of the price fixed in the ordinance to be paid for the land, and the further sum of twenty dollars to cover the expenses of procuring the deed, including the notarial and clerk's fee, cost of examination of abstract and of publication of the ordinance authorizing the sale. The clerk, out of the money received by him, shall pay to the City Attorney the sum of ten dollars (\$10.00) for examining the abstract, one dollar (\$1.00) to the notary for taking the acknowledgement of the deed, retain his own fee of three dollars (\$3.00) for drawing the deed, and then deposit the balance of the money in the City treasury.

4.20.100 Private Sale of Property for Economic Development or Redevelopment

- A. The City Council may, for purposes of economic development or redevelopment, convey any City-owned real or personal property or any interest in such property at private sale, without notice. The purchase price for such property shall be the fair market value, unless the City Council determines that a public purpose will be served by the sale of the property at less than its fair market value.

- B. The terms and conditions of any such conveyance shall be at the discretion of the City Council. The City Council may obligate the transferee of the real or personal property to:
 - 1. Use the property only for the purposes designated by the City Council.
 - 2. Begin the economic development or redevelopment of the property within a period of time fixed by the City Council.
 - 3. Comply with any other conditions which the City Council deems necessary to carry out the purposes of economic development or redevelopment.

4.20.110 Private Sale of Property to Ground Lessee

- A. For purposes of this Section, "ground lease" means a lease of City property which permits the lessee to construct improvements on the leasehold property and which has a term of twenty (20) or more years.

- B. The City Council may convey to the lessee at private sale, without notice, any City-owned property that is subject to a ground lease, if the City Council determines that the benefit to the City from the sale of the property to the lessee exceeds the benefit from City's continued ownership of the property or the benefit

that the City would receive from the City's sale of the property as otherwise authorized by this Chapter.

- C. The purchase price for City property subject to a ground lease shall be its fair market value, unless the City Council determines that a public purpose will be served by the sale of the property at less than its fair market value. For purposes of this Section, "fair market value" shall be the greater of the following:
1. The fair market value of the City's interest in the property as leased; or
 2. The fair market value of the property as unencumbered by the lease.
- D. The City Council, at its discretion, may impose conditions on the sale of City's property to the lessee, including without limitation, requiring the purchaser to use the property only for the purposes designated by the City Council.

PASSED FOR PUBLICATION of title this 24th day of August, 2010, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES: CAMPOS.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk