



DATE: October 16, 2018

CATEGORY: Consent

DEPT.: City Attorney's Office

TITLE: **Introduction of an Ordinance of the City of Mountain View Amending Procedures for Leasing Property in Excess of 55 Years**

RECOMMENDATION

Introduce an Ordinance of the City of Mountain View Amending Procedures for Leasing Property in Excess of 55 Years, to be read in title only, further reading waived, and set second reading for October 23, 2018.

BACKGROUND

Generally, cities are allowed to lease property owned, held, or controlled by them for a period not to exceed 55 years. Charter cities may lease properties in excess of 55 years if they utilize procedures specified in their charter (if any) or pursuant to an ordinance establishing the parameters within which the City will consider entering into and reviewing a longer-term lease. In 1994, the City adopted an ordinance establishing such procedures (Mountain View City Code Sections 2.89 and 2.90).

The purpose of this agenda item is to propose changes to the existing ordinance to reflect the rent provisions in the City's leases. The City's lease portfolio includes 24 leases. The portfolio consists of a wide variety of leases, including short-term (less than 10 years) and long-term (greater than 55 years) leases, ground leases and leases of improved property, and different rent structures that reflect the intended use of the property. City leases also serve different purposes, including revenue generation, addressing social objectives, and economic development. Rent structures for these leases vary and reflect the use of the property. They include leases with free or nominal rent (e.g., Avenidas and the Chamber of Commerce); one-time prepaid rent (e.g., Franklin Street Family Housing, Efficiency Studios, Google Charleston East south parcel); rent with annual increases and periodic revaluations (e.g., other Google leases and our retail leases); percentage rents (e.g., Michaels at Shoreline and Silicon Shores); and leases with a combination of a basic rent that is adjusted periodically, participation rent, and percentage rent (e.g., Moffett Gateway and Hope Street).

Following Council's direction to staff to issue an RFP/RFQ for an affordable housing project on Lot 12 that may include the lease of City property, it seemed an opportune time to update the ordinance to reflect the City's practices and experiences with ground leases.

ANALYSIS

The current ordinance requires all leases in excess of fifty-five (55) years to undergo periodic review and include a mechanism to adjust rent to reflect the fair market value rent at the time of the review. City leases are not always structured in a traditional manner of determining the lease based on the value of the land. Different factors are considered to determine and negotiate the rent structure for each lease, based on the City's goals for each transaction. For example, when the City leases land for a hotel or office building (e.g., Hope Street or Ameswell), it receives basic ground lease rent. In addition to the ground lease rent, the City receives additional revenues based on the gross receipts, proceeds for certain transfers of the interest in the lease, and transient occupancy tax from the hotel. Together, these components make up the rate structure for these leases which are quite different from the Google ground leases, the leases for Bean Scene and Savvy Cellar, or for affordable housing projects on City property. In addition, a number of the City's leases include specific provisions to adjust the rent to capture changes in market and growth (or decline) in property values.

As required by the current ordinance, all leases are periodically reviewed to ensure compliance with the lease terms and a good return to the City in the form of rent. After the adoption of the ordinance, some leases have been structured to provide a method to adjust rents to account for changes in the market and property values specific to the goals of each lease. The proposed amendments modify the periodic review requirement regarding the rent provisions to acknowledge the specific provisions within these leases to adjust the rent to reflect changes in the market and growth (or decline) in property values by exempting them from periodic review. An additional modification is also proposed to reflect the practice of the City regarding the competitive bid process for leases. If the City can demonstrate that entering into a lease without engaging in a competitive bid process is in the best interest of the City, it may do so.

FISCAL IMPACT

The fiscal impact is difficult to quantify how a negotiated long-term lease value may differ from a future current market value. However, the leases that would be exempt from periodic review were structured to adjust rents to reflect changes in the market

and property values periodically, and the adjustments are tailored to the goals of each lease. Fair market value rent may not achieve the goals and objectives desired by the City for a particular property lease (e.g., Franklin Street Family Housing, Chamber of Commerce, etc.)

ALTERNATIVES

Do not adopt the proposed amendments.

PUBLIC NOTICING – Agenda posting.

Prepared by:

Jannie L. Quinn
City Attorney

JLQ/LK/2/CAM
014-10-16-18CR

Attachment: 1. Proposed Ordinance