



CITY OF MOUNTAIN VIEW

MEMORANDUM

City Manager's Office and
Public Works Department

DATE: April 17, 2018

TO: Council Procedures Committee

FROM: Kimberly S. Thomas, Assistant to the City Manager
Dennis P. Drennan, Real Property Administrator

VIA: Daniel H. Rich, City Manager

SUBJECT: **Consideration of Updates to the Authority and Procedures for the Purchase/Acquisition of Property – Council Policy H-1: Acquisition of Real Property**

BACKGROUND

This item was referred to the Council Procedures Committee (CPC) from Committee member McAlister and the City Manager, and was incorporated into the future CPC agenda topics. The referral was to review existing policies, current procedures, and explore options to make the acquisition of real property more expeditious.

ANALYSIS

Staff reviewed existing policies for background and context. Staff found that the existing Council Policy H-1: Acquisition of Real Property, adopted on May 11, 1959, had not been previously reviewed or updated (see Attachment 1). The policy is solely focused on easements and right-of-way. The City Manager's delegated authority in the policy is limited to \$1,000. The policy and acquisition amounts do not reflect current authorities and procedures. In addition, State law and regulations have been enacted and codified since 1959 that prescribe certain process obligations for any public entity acquiring an interest in real property.

The authority to acquire real property most often originates from a Council-approved Capital Improvement Project (CIP) for parks, trails, road widening, utility infrastructure, or other public facilities. The acquisition may be included as part of a programmatic CIP or may be the subject of a separate CIP. Appropriations for real property acquisitions come from a myriad of fund sources, including, but not necessarily limited to, the Parkland Dedication Fund, the Shoreline Community,

Strategic Property Acquisition Fund, and Construction/Conveyance (C/C) Tax. Presently, the acquisition of real property requires a minimum of two actions by the Council. The first is a Closed Session, where the Council provides direction on price and terms and authority to make an offer, and the second is approval of the negotiated purchase at a Council meeting. Acquisition by negotiations is the City's preferred method for all real property acquisitions. The use of eminent domain is used very sparingly and generally only when negotiations have failed. Eminent domain can only be used when the Council adopts a Resolution of Necessity in a public hearing after making certain findings required by State law.

The City's Real Property Program Administrator in the Public Works Department leads property acquisition efforts. The Administrator follows California Government Code Section 7267 *et seq.* and the California Code of Regulations, Title 25, Division 1, Chapter 6, Article 6, California Relocation Assistance and Real Property Acquisition Guidelines in all acquisitions (see Attachment 2). This Code was adopted by the City Council by Resolution No. 17051, adopted in 2005 (see Attachment 3). The City uses this process for all property acquisitions associated with right-of-way, easement, and fee title.

To acquire parks and open space, the City uses Council Policy H-9, Parkland Acquisition Policy (Attachment 4). This policy was adopted in September 2015 specifically for the acquisition of real property for use as a City park or open space. The policy provides authority for the expeditious acquisitions of property listed for sale by providing the City Manager, or designee, the discretion and authority to acquire park land, with the following conditions:

- a. The intended use of the real property is for a park or open space site.
- b. The park or open space site is in an area of the City deemed deficient as per the Parks and Open Space Plan or is adjacent property to existing parks.
- c. There is sufficient funding available to cover the purchase cost fees.

POLICY OPTIONS

Given that State Code and Regulations supersedes Council Policy H-1, staff presents three possible policy options to consider. The options can be taken alone, or together.

1. ***Repeal and Eliminate Council Policy H-1: Acquisition of Real Property.*** This action would remove a dated policy, but would not speak to other policy goals.

2. ***Update Council Policy H-1 with Current Codes:*** Add applicable references to California Government Code Section 7267 *et seq.* and the California Code of Regulations, Title 25, Division 1, Chapter 6, Article 6, California Relocation Assistance and Real Property Acquisition Guidelines and the Code adopted by the City Council by Resolution No. 17051, Series 2005. This action would update the policy to reflect current statutory procedures.
3. ***Update Council Policy H-1 to Align with Similar Policy H-9 and Update Council Policy A-10 and Increase the City Manager's Delegated Authority for Real Property Transactions (Purchase and Lease):*** The City Manager's current delegated authority for real estate transactions is \$100,000 for the purchase of property or property rights and \$100,000 for the lease of property to others (cumulative value of lease term, not annual value).

With land values in Mountain View, the practical effect of a delegated authority capped at \$100,000 requires that all but the most inconsequential acquisition or lease requires action in a Closed Session for direction on price and terms of payment and a Regular Session action to approve the transaction. Increasing the City Manager's delegated authority to \$500,000 would reduce the number of Council actions required and streamline the acquisition or leasing process without compromising good business practices.

Currently, if the acquisition of a property, or property rights, exceeds \$100,000, staff must schedule and go to a Council in a Closed Session for direction on price and terms of payment, and authority to make an offer to purchase. If staff is unable to reach agreement with a property owner within the direction and authority given by Council, staff must then return to Council in Closed Session for further direction. Once staff reaches agreement within the parameters given by Council, staff must then return to Council in a Regular Session to approve the acquisition and to authorize the City Manager to sign all documents related to the acquisition.

If the City Manager's delegated authority was increased to \$500,000 for both acquisitions and leases, several current real estate transactions could be accelerated. Examples include:

- The acquisition of 10' wide easements from two residential properties for street improvements to Martens Avenue. The value of both of those easements are less than \$200,000 each.

- The acquisition of additional right-of-way along a segment of Shoreline Boulevard for the dedicated bus lane project. Of the eight ownerships affected by this acquisition, the value of the acquisition for seven of the properties is less than \$500,000.

If the authority were increased it could be conditioned to focus on one or more important Council priorities, and budget available as it is in the Parkland Acquisition Policy (H-9), such as:

- a. The intended use of the real property is for affordable housing or economic development, or the acquisition of property, or property rights, is already included in an approved Capital Improvement Project.
- b. There is sufficient funding available.

Alternative—Option 3a: In the absence of an increase in authority to \$500,000, a consideration of adjusting the \$100,000 for the lease of property to others from a cumulative value of lease term, to just the annual rent, is another option.

Option 3 Would Require Changes to Council Policy A-10: The current City Manager authorization to execute City contracts and agreements and increase certain limited appropriations would need to be updated to reflect any threshold changes in delegated authority.

Staff surveyed the cities of Palo Alto, Sunnyvale, and Santa Clara to learn of the delegated authorities for the City Managers of those cities on real estate transactions. The following table presents those findings:

City	Code Section	Acquisition Authority	Leasing Authority
Palo Alto	Chapter 2.30, Administrative Code	\$85,000	Any lease price for a term not exceeding three years
Sunnyvale	Sec. 2.07.030, Municipal Code	\$75,000	\$75,000

City	Code Section	Acquisition Authority	Leasing Authority
Santa Clara	N/A	No delegated authority for real estate transactions.	Requires Council approval no matter how much rent is involved. Short-term license agreements of City-owned properties (i.e., less than 6 months) can be done administratively.

RECOMMENDATION

Discuss and provide staff direction whether changes to existing policy, current procedures, and City Manager authority for the acquisition and leasing of real property should be considered for further action. Depending on the Committee's direction, staff will take applicable recommendations directly to the Council.

KST-DPD/2/MGR
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- Attachments:
1. Council Policy H-1: Acquisition of Real Property
 2. California Code of Regulations, Title 25, Division 1, Chapter 6, Article 6, California Relocation Assistance and Real Property Acquisition Guidelines
 3. City Council Resolution No. 17051, adopted in 2005
 4. Council Policy H-9: Parkland Acquisition Policy