RESOLUTION NO. 20–2001

On a Roll Call Vote, Failed with 3 Syes and 3 Noes
(February 13, 2001)

ADOPTING A POLICY TO REQUIRE AN OPEN AND COMPETITIVE PUBLIC OFFERING FOR DEVELOPMENT OF PUBLIC PROPERTY OF BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

BASIS FOR RESOLUTION

1. Pursuant to California Community Redevelopment Law, California Health & Safety Code Sections 33000 et seq., the Redevelopment Agency of the City and County of San Francisco (the “Agency”) may acquire properties for redevelopment purposes using public tax-increment and other funds.

2. The Agency is also authorized by Section 33430 of Community Redevelopment Law to sell, lease, exchange, transfer or otherwise dispose of Agency property for the purposes of redevelopment.

3. The Agency has determined that it is appropriate to establish a uniform policy whereby staff evaluates and recommends qualified developers to develop Agency property to the Agency Commission.

4. It has been recommended that the Agency adopt an Agency Public Offering Policy, attached to this Resolution as Attachment 1.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Agency Public Offering Policy is adopted, in the form attached to this Resolution as Attachment 1.

APPROVED AS TO FORM:

[Signature]
Bertha A. Ontiveros
Agency General Counsel
AGENCY PUBLIC OFFERING POLICY

I. INTRODUCTION

Section 1. Background. Article 11, Section 33431, California Redevelopment Law ("Law") provides that a redevelopment agency may dispose of property it owns or leases with or without a public offering but only after a public hearing with statutory public notice.

Under the Law, the Redevelopment Agency of the City and County of San Francisco (the "Agency"), acting by and through the Redevelopment Agency Commission (the "Commission"), has the power, subject to applicable laws, to sell, lease, exchange, transfer, convey or otherwise grant an interest in or right to use or occupy (to "dispose") any real property it owns or leases ("Agency Property").

Section 2. Purpose. This Agency Public Offering Policy ("Offering Policy") establishes the specific rules and procedures for the disposition of Agency Property.

It shall not apply to (a) short-term licenses, permits to enter or rental agreement for the interim or temporary use of Agency property prior to the disposition of such property for development, which will be governed by a separate Agency leasing policy; (b) easements or other similar interests in Agency Property necessary or appropriate for the development of adjacent properties; and (3) transfers to other public agencies for public purposes.

Section 3. Statement of Policy. All solicitations regarding the disposal of Agency property by Request for Proposals or Request for Qualifications shall be conducted in a manner that provides maximum open and free competition consistent with this Offering Policy. Such solicitation procedures shall not restrict or eliminate competition. Examples of restrictive competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) applying noncompetitive practices among firms; (3) organizational conflicts of interest; and (4) unnecessary experience, insurance and bonding requirements.

II. THE SELECTION PROCESS

Section 4. Conflict of Interest Prohibition. The Agency's officers, employees, Commissioners and agents shall follow all applicable financial disclosure and disqualification/Conflict of Interest provisions of the State Political Reform Act, Government Code Section 1090 and any other applicable law or regulations. No employee, officer, Commissioner or agent of the Agency shall participate in selection or in the award or administration of an Agency contract if a conflict of interest, real or
Section 5. Resolution Authorizing an Offering. Before any disposition, the Agency Commission shall adopt a resolution authorizing an offering ("Authorizing Resolution") at a meeting properly noticed and conducted under the applicable provisions of the Ralph M. Brown Act, Chapter 9 of Part I of Division 2 of Title 5 of the California Government Code, Sections 54950 to 54962 et. seq. ("Public Meeting"), by a majority vote of the Commissioners present at the Public Meeting (or, if proceeding under Section 9 of this Public Offering policy, by a vote of not less than 4/5 of the Commissioners), declaring its intention to dispose of a specified disposition parcel. Any such Authorizing Resolution shall specify:

(a) The location (Assessor's Block/Lot, Parcel Number and/or address) of the Disposition Parcel;

(b) whether the Disposition Parcel is available for sale, lease (and, if so, for what time period), and/or other means of disposal;

(c) Whether the disposition of the Disposition Parcel will be made (1) following a proposal selection pursuant to a request for proposals according to the procedures set forth in Section 6 of this Offering Policy, (2) following a Developer selection pursuant to a request for qualifications according to the procedures set forth in Section 7 of this Offering Policy, (3) some combination of the procedures set forth in Sections 6 and 7 of this Offering Policy, or, (4) in cases where the Agency makes sufficient finding that special circumstances exist under Section 6 of this Offering Policy by direct, sole-source negotiations, pursuant to that Section 9;

(d) Any other information required to be contained in the Authorizing Resolution pursuant to Sections 6,7, or 9, as applicable; and

(e) Such other information as the Agency Commission deems appropriate to facilitate a disposition in fulfillment of the goals of the Agency.

Section 6. Disposition pursuant to a Request for Proposals. If the Authorizing Resolution provides for a disposition pursuant to a request for proposals (a "RFP"), such Offering shall take place in accordance with the procedures set forth in this Section 6.

(a) Solicitations of Proposals. The Authorizing Resolution shall:

(1) approve a RFP or similar document in substantially final form soliciting responses for qualified persons or entities to serve as a tenant, purchaser, and/or developer, as the case
may be, (a "Developer") of a Disposition Parcel. Any RFP shall (i) require qualified proposals to describe, among other things, the price or other consideration offered to the Agency, other principal business terms of the proposals, total projected revenues to the Agency, and the nature of any proposed improvements to the Disposition Parcel; (ii) contain general selection criteria for the ranking and selection of qualified proposals; and (iii) describe generally the permitted uses that may be made of the Disposition Parcel.

(2) establish procedures for dissemination of the RFP and information about the opportunity to develop the Disposition Parcel; and

(3) establish a period of not less than thirty (30) days after issuance of the RFP to receive responses to the RFP (such period may be waived or modified in the Authorizing Resolution passed by a majority of the Commission).

(b) Proposal Selection. The Executive Director shall implement the procedures set forth in the Authorizing Resolution and related RFP and shall review all timely responses. The Executive Director shall provide to the Agency Commission an initial ranking of the responses to the RFP and a recommendation to (i) select a proposal based on the selection criteria described in the RFP; (ii) reject some or all responses; or (iii) recommence the RFP process in whole or in part with any modifications to the solicitation process.

Following receipt of the Executive Director's ranking and recommendation, the Agency Commission may adopt a resolution at a Public Meeting by a majority vote of the Commission:

(1) selecting a proposal and authorizing execution of an exclusive negotiating agreement between the Agency and the selected Developer setting forth the terms, conditions and time period for negotiations. During such negotiations, the selected Developer and the Agency will, subject to all applicable laws, including any required environmental review, seek to reach mutually satisfactory agreement for the disposition consistent with the Developer's proposal (a "Disposition and Development Agreement");

(2) rejecting some or all responses and recommencing the solicitation process in whole or in part with any appropriate modifications to the Authorizing Resolution regarding the solicitation process;

(3) rejecting all responses and suspending efforts to offer the Disposition Parcel; or
(4) taking such other action as the Agency deems appropriate under the circumstances.

(c) Approval of the Disposition and Development Agreement (a "DDA"). After completion of the negotiations and processes described in subsection 6(a) and (b) above, and subject to all applicable laws, the Agency may approve a disposition pursuant to a DDA.

Approval of a DDA shall be made by a resolution adopted at a Public Meeting following a public hearing by a majority vote of the Agency Commission (the "DDA Approval Resolution"). Prior to such Public Meeting, the Executive Director shall make available for public inspection a summary of the material terms and conditions of the DDA and information concerning the identity of the party to whom disposal is proposed.

The DDA Approval Resolution shall authorize execution of the DDA by the Executive Director and shall contain findings that:

(1) the Disposition contemplated by the DDA will serve the goals of the Agency and is in the public interest of the City; and

(2) the consideration is not less than either (i) the fair market value at its highest and best use in accordance with the applicable redevelopment plan; or (ii) the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease.

Section 7. Disposition by Negotiated Disposition in connection with a Request for Qualifications (a "RFQ"). If the Authorizing Resolution provides for a disposition pursuant to a request for qualifications, such disposition shall take place in accordance with the procedures set forth in this Section 7.

(a) Solicitations of Qualified Developers. The Authorizing Resolution shall:

(1) approve a RFQ or similar document in substantially final from soliciting responses for qualified persons or entities to develop a Disposition Parcel. Any RFQ shall contain general selection criteria against which to evaluate those persons or entities submitting qualified responses to the RFQ.

(2) establish procedures for dissemination of the RFQ and information about the opportunity to develop the Disposition Parcel; and

(3) establish a period of not less than thirty (30) days after issuance of the RFQ to receive responses to the RFQ. (such period may be waived or modified in the Authorizing Resolution passed by a majority of the Commission).

(b) Developer Selection. The Executive Director shall implement the procedures
set forth in the Authorizing Resolution and review all timely responses. The Executive Director shall provide to the Agency Commission an initial ranking of the responses to the RFQ and a recommendation to the Agency Commission to (i) select a respondent based on the selection criteria described in the RFQ; (ii) reject some or all responses; or (iii) recommence the RFQ process in whole or in part with any modifications to the solicitation process.

Following receipt of the Executive Director's recommendation, the Agency Commission may adopt a resolution at a Public Meeting following a public hearing by a majority vote of the Commission:

(1) selecting a Developer and authorizing execution of an exclusive negotiating agreement between the Agency and the selected Developer setting forth the terms, conditions and time period for negotiations. During such negotiations, the selected Developer and the Agency will, subject to all applicable laws, including any required environmental review, seek to reach mutually satisfactory agreement for the disposition;

(2) rejecting some or all responses and recommencing the solicitation process in whole or in part with any appropriate modifications to the Authorizing Resolution regarding the solicitation process;

(3) rejecting all responses and suspending efforts to offer the Disposition Parcel; or

(4) taking such other action as the Agency deems appropriate under the circumstances.

(c) Approval of the Disposition and Development Agreement. After completion of the processes described in subsection 7(a) and (b) above, and subject to all applicable laws, the Agency may approve a disposition pursuant to a DDA.

Approval of a DDA shall be made by a resolution adopted at a Public Meeting by a majority vote of the Commission (the "DDA Approval Resolution"). Prior to such Public Meeting, the Executive Director shall make available for public inspection a summary of the material terms and conditions of the DDA.

The DDA Approval Resolution shall authorize execution of the DDA by the Executive Director and shall contain findings that:

(1) the disposition contemplated by the DDA will serve the goals of the Agency and is in the public interest of the City; and

(2) the consideration is not less than either (i) the fair market value at its highest and best use in accordance with the applicable redevelopment plan; or (ii) the fair reuse value at the use and with the covenants and conditions
and development costs authorized by the sale or lease.

Section 8. Guidelines for Selecting a Solicitation Procedure. The Executive Director shall recommend to the Agency Commission the appropriate process to initiate the disposition of a Disposition Parcel in accordance with this Public Offering Policy pursuant to a RFP, a RFQ, or by direct sole source negotiations. The selection of a solicitation procedure shall consider (i) the range of generally acceptable uses that can be made of a particular Disposition Parcel, taking into account any current reuse, redevelopment or other land use plans adopted for the project area, and the requirements of any other applicable laws, including the California Environmental Quality Act; and (ii) whether, due to any special requirements or limitations regarding the use of or improvements to the Disposition Parcel, or for any other reason, only a limited number of potential persons or entities could successfully perform the duties and responsibilities of the Developer of such Disposition Parcel.

Section 9. Disposition by Direct Sole-Source Negotiations Under Special Circumstances. Notwithstanding any other provision of this Offering Policy, the Agency may by resolution authorize the Executive Director to negotiate an agreement with a prospective Developer for disposition of a Disposition Parcel without prior announcement of availability of the Disposition Parcel or any prior solicitation of other prospective Developers (a "Sole-Source DDA"), subject to the conditions provided in subsection 9(a) and (b) below.

(a) Super Majority Vote Required. A resolution authorizing a disposition by the sole-source direct negotiations described in this Section 9 shall require the approval of 4/5 of the Agency Commission present at the Public Meeting.

(b) Required Findings Regarding Special Circumstances. A resolution authorizing a disposition by the sole-source direct negotiations described in this Section 9 shall find, and shall state the Agency's basis for finding, for the Disposition Parcel in question, that:

(1) proceeding under this Section 9 is reasonably calculated to enable the Agency to realize additional disposition proceeds and/or other identifiable public benefits; and

(2) the additional proceeds and/or other public benefit or benefits in question cannot be realized or are substantially less likely to be realized by the disposition procedures authorized by Sections 6 or 7 of this Offering Policy.

(c) Negotiating a Sole-Source DDA. Negotiations under this Section 9 may, but need not be on an exclusive basis and shall be consistent with any terms and conditions that the Agency may establish. The resolution shall provide for the Executive Director to report to the Agency concerning such negotiations.

(d) Approval of a Sole-Source DDA. After completion of the processes described in
subsection 9(a) and (b) above and subject to all applicable laws, the Agency may approve a disposition pursuant to a Sole-Source DDA. Approval of the Sole-Source DDA shall be by a resolution adopted at a Public Meeting following a public hearing by a majority vote of the Agency Commission. Prior to such Public Meeting, the Executive Director shall make available for public inspection a summary of the material proposed terms and conditions of the Sole-Source DDA.

The resolution authorizing the Sole-Source DDA shall authorize the execution of the Sole-Source DDA by the Executive Director and shall contain findings that:

(1) the Disposition contemplated by the Sole-Source DDA will serve the goals of the Agency and is in the public interest of the City; and
(2) the consideration is not less than either (i) the fair market value at its highest and best use in accordance with the applicable redevelopment plan; or (ii) the fair reuse value at the use and with the covenants and conditions and development costs authorized by the sale or lease.

Section 10. Other Procedures. In addition to compliance with the procedures set forth in this Offering Policy, the Agency shall comply with any other applicable provision of law in disposing of property under its jurisdiction or control, including, to the extent applicable (i) the provisions of the California Environmental Quality Act (California Public Resources Code Section 2100 et seq.), and (ii) any requirements regarding disposition of a Disposition Parcel set forth in any redevelopment plan or amendment of same approved by the Board of Supervisors.

Section 11. Amendment. This Offering Policy supercedes any prior policies concerning the disposition of Agency Property and may be amended by a resolution adopted by a majority of the Agency Commission.