

10/27/2022 Council Agenda
Item 41
Staff Concerns

Opening Remarks

- The premise for developing Council policy guidance is understood
- No two deals are alike - steadfast policies with limited or no flexibility should balanced with the current discretion Council for transactions
- The policy, specifically the real estate disposition and requirements of disposition, should be reviewed by the AEDC Board and Staff

Staff Concerns

Erodes at City's Competitiveness for Real Estate Acquisition

Pg. 6 "City Manager shall seek the City Council's input within the early stages of the City's decision-making process concerning the development, redevelopment, acquisition, sale, or lease of real estate."

Pg. 7 "Prior to engaging in formal negotiations with a third party (i.e., a non-City-affiliated entity) to purchase, acquire, sell, lease or dispose of City-owned real property, the City Manager shall solicit input from the City Council on the overall basic terms, conditions, and objectives of the proposed transaction."

- Examples: Health South and St. John's were placed under contract within the City Manager's spending authority to immediately secure the parcels from being sold. The contracts are secured as earnest money and the purchase is contingent of Council approval.
- City staff uses current authority to seize real estate opportunities that are immediate and time-sensitive.

Staff Concerns

Adds Unquantifiable Costs to Non-Profit Partners, Creative Space Operators, and Locally-Owned Small Businesses

Pg. 10 "This policy does not impact long-term leases already approved by the City Council."

Pg. 16 "The City Manager shall thus incorporate the following baseline requirements within each lease of City-owned property.."

Pg. 16 "All construction on a City-owned property, whether performed by a City employee or a contractor, must be certified by a third-party to verify that the construction project either (i) complies with or exceeds the City requirements under the Better Builder Certification program, as published for the then-current year, or (ii) complies with or exceeds a similar program, if approved by ordinance, that establishes comparable requirements for (a) the payment of a living wage; (b) completion of OSHA-10 training; (c) workers' compensation; (d) hiring goals from local craft training programs; (e) compliance with all applicable state, federal, and local laws; and (f) independent on-site monitoring.

Pg. 16 "All construction on a City of Austin-owned property should comply with the requirements of the City's Minority-Owned and Women- Owned Business Enterprise Procurement Program…"

Pg. 16 "Any lease to a commercial tenant or operator using City-owned real property shall incorporate a requirement that such tenant must comply with the City's living wage standards and shall incorporate a revenue sharing provision."

- Leases already approved by the City Council will expire at some point. A full list can be provided to Council.
- At expiration, renegotiated leases that require Council approval will need to comply with the resolution.
- The cost savings achieved through City lease space is used by nonprofits to fulfill their respective missions.
- Because there is no floor for "all construction", any permitted construction activity will invoke the above requirements and any related costs.
- Nonprofits are considered commercial tenants and will need to comply with living wage standards and revenue sharing for any new leases or renewed leases that require City Council approval.

Staff Concerns

Eliminates New Council-Directed Leases to Non-Profit Partners and Unwinds Solutions that Responded to Previous Audit Findings

Pg. 10 "This policy does not impact long-term leases already approved by the City Council."

Pg. 10 "The City Manager is directed to establish a fair, transparent, and openly competitive process for the leasing of City-owned facilities…Where appropriate, the lease should be structured on a short-term basis to provide an opportunity for such organization to build a sustainable foundation without becoming reliant on long-term City subsidization…The City Manager shall return to City Council with this recommended process by February 1, 2023."

Pg. 11 "Prior to executing a contract for the sale or long-term ground lease of any City-owned real property, the City Manager shall obtain an appraisal from a qualified appraiser, with expertise in the area of the property and type of property that is to be sold or leased, concerning the present value of the property, so that the City Council can review comparables when evaluating the recommended price under the proposed transaction."

- Leases already approved by the City Council will expire at some point. A full list can be provided to Council.
- At expiration, renegotiated leases that require Council approval will need to comply with the resolution.
- In February 2022, the Finance Department developed a Non-Profit Lease Policy in response to previous Audit Findings. The Policy defines and provides the basis for two methods for utilizing below market rental rate leases to non-profits:
  - Council Action Method: Most often executed in the form of a City ordinance or resolution which includes explicit instructions for critical parts of the lease agreement, such as term, rental rate, location, facility, etc. The Council Action approach is the preferred option as it provides a straightforward and precise direction.
  - Direct Negotiation Method: Council does not provide specific direction with respect to the desired lease terms.
- The resolution nullifies the Non-Profit Lease Policy and requires all non-profits to compete for new leases and upon lease expiration.
- By virtue of the foundational premise, below market rental leases will never compare to market comparables.

Staff Concerns

Increases Challenge for Finding Market Rate Paying Commercial Tenants

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- Staff currently faces challenges for finding commercial tenants for City leases at market rates
- The above requirements will reduce the competitiveness of City leases at market rates
- Because there is no floor for “all construction”, any permitted construction activity will invoke the above requirements and any related costs.

Staff Concerns

Reduces the Foundational Benefits for Creating and Utilizing the Austin Economic Development Corporation

- The following are excerpts from the July 31, 2020 Memo to Mayor and Council on Recommendations from Matt Kwatinetz for creating the Austin Economic Development Corporation
  - The success of the AEDC is premised on its ability to obtain control of City-owned property without competitive bidding. The AEDC requires either complete ownership, or a pre-negotiated interlocal agreement allowing access and authority to negotiate transactions utilizing property.
  - The AEDC will need nearly complete autonomy in its work with limited restrictions.
  - Unlike the community benefit requirements embedded in current City programs such as Chapter 380, procurement requirements above State law requirements, minimum wage requirements and others, the AEDC requirements for each property are contemplated to be agreed upon in the annual contracting process with the City.
  - In some cases, the AEDC will not have the identical requirements of other COA projects due to the nature of its contracts. This will allow the nimbleness and flexibility found in best practice models needs to be present for the AEDC.
  - Mandates for the AEDC to exactly parallel all COA policies will pose risks and challenges to fully utilizing the benefits of creating the AEDC.

Closing Remarks

- Thank you for the opportunity to provide overarching and specific concerns
- Committed to working with Council on policy that conveys values to be achieved in real estate matters