

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CHAPTER 2.07 OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO PURCHASE, SALE OR LEASE OF REAL PROPERTY

WHEREAS, in November 2016, a citizen initiative (Measure M) that would have required voter approval for any that any sale, lease, lease extension, lease renewal, land swap or transfer of property owned, leased or used by the City as a public park or community service amenity failed by a very small margin; and

WHEREAS, to respond to some of the concerns raised by the community as part of Measure M, including preserving public parks, open spaces, and community amenities for public use, public perception that the City is under increasing pressure to repurpose public lands, and that checks on such pressures are necessary, the City reviewed possible changes to Sunnyvale Municipal Code Chapter 2.07 (Purchase, Sale or Lease of Real Property); and

WHEREAS, the City of Sunnyvale desires to amend certain sections of Sunnyvale Municipal Code Chapter 2.07 relating to Purchase, Sale or Lease of Real Property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 2.07 AMENDED. Chapter 2.07 (Purchase, Sale or Lease of Real Property) of Title 2 (Administration and Personnel) of the Sunnyvale Municipal Code is hereby amended to read as follows:

CHAPTER 2.07. PURCHASE, SALE OR LEASE OF REAL PROPERTY

- 2.07.010. Title.**
- 2.07.020. Purpose.**
- 2.07.030. Definitions.**
- 2.07.040. Designation of Publicly Accessible Recreation and City Service Property.**
- 2.07.0530. Awarding authority for purchases, sales or leases of real property.**
- 2.07.0640. Long-term lease of city property.**

2.07.010. Title.
This chapter shall be known and may be cited and referred to as the “Real Property Ordinance of the City of Sunnyvale.”

2.07.020. Purpose.

The purpose of this chapter is to set forth who has authority to purchase, sell or lease real property on behalf of the city.

2.07.030. Definitions.

(a) Publicly Accessible Recreation and City Service (“PARCS”) Property. For purposes of this Chapter 2.07, a “Publicly Accessible Recreation and City Service” Property shall include any city-owned property acquired or dedicated, or used at the time of adoption of this ordinance, as a public park, recreational open space, library, swimming pool, community center, performing arts venue, garden, golf course, or building containing the city council chambers. Publicly Accessible Recreation and City Service Properties shall not include real properties (1) not owned by the city, such as properties owned by other public or private entities and used by the city pursuant to an agreement with the owner, (2) acquired by the city for a specific project or purpose involving the future conveyance of such property to a third party for other than a public use; or (3) owned by the city but not acquired, dedicated, or used for the public impact purposes described in this subsection.

(a) — (b) Purchase, sale, or lease of real property. “Purchase,” “sale,” or “lease” of real property shall have their ordinary legal meanings and include amendments, extensions, and renewals of those agreements or transactions. The transfer of an interest in real property, other than fee title or a lease, by the city is not a sale of real property if the city retains title to the property. For example, transactions such as easements, licenses, franchises, concessions, use or access permits or agreements, and financing arrangements involving city-owned property shall not be considered purchase, sale, or lease transactions for purposes of this ordinance.

2.07.040. Designation of Publicly Accessible Recreation and City Service Property.

(a) The City Council shall approve by resolution a list of Publicly Accessible Recreation and City Service properties that are subject to the requirements of sections 2.07.040 and 2.07.050 concurrent with adoption of this ordinance and as necessary from time to time to reflect relevant changes to the city’s real property inventory.

(b) Prior to adopting a resolution amending the list of PARCS properties, the city Council shall hold a public hearing. Notice of the time and place of the hearing shall be published once not less than fifteen (15) days prior to the public hearing in the official newspaper of the city.

(c) Any decision to remove a property from the PARCS list shall require the affirmative vote of at least five council members.

2.07.0530. Awarding authority for purchases, sales or leases of real property.

(a) Awarding authority for all real property purchases, and sales and leases of real property not designated as Publicly Accessible Recreation and City

Service Property.

(1) The city council shall be the awarding authority for all purchases of real property, and for sales or leases of real property not designated as Publicly Accessible Recreation and City Service Property for the city where the purchase or sales price or lease cost exceeds a total of seventy-five thousand dollars.

~~(2)(b)~~ The city manager shall be the awarding authority for all purchases of real property, and for sales or leases of real property not designated as Publicly Accessible Recreation and City Service Property for the city where the purchase or sales price or lease cost ~~is~~ totals seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to fifty-five years.

(b) Awarding authority for sales and leases of Publicly Accessible Recreation and City Service Property.

(1) The city council shall be the awarding authority for all sales or leases of Publicly Accessible Recreation and City Service Property where the sales price or lease cost exceeds a total of seventy-five thousand dollars.

(2) Any sale or lease of Publicly Accessible Recreation and City Service Property subject to city council approval pursuant to subsection (b)(1) requires the affirmative vote of at least five council members, except that leases of any property to a third party providing recreational services available to the public shall require the affirmative vote of a majority of council members.

(3) The city council shall hold a public hearing prior to voting on any sale or lease of PARCS property. Notice of the time and place of the hearing shall be published once not less than fifteen (15) days prior to the public hearing in the official newspaper of the city. Public notice of the meeting at which the Council is scheduled to consider the sale or lease of a Publicly Accessible Recreation and City Service Property shall also include mailed notices to surrounding residents and/or property owners not less than fifteen (15) calendar days before the public meeting. Mailed notices shall be sent to a minimum of a 2,000 foot radius of the PARCS property that is the subject of the proposed sale or lease.

(4) Except as provided in subsection (b)(1), the City Manager shall be the awarding authority for all sales or leases of Publicly Accessible Recreation and City Service Property where the sales price or lease cost totals seventy-five thousand dollars or less, or where the lease results in revenue to the city and is for a period less than or equal to five years.

2.07.0640. Long-term lease of city property.

(a) The city council may enter into a lease of city property for a term in excess of fifty-five years pursuant to the procedures set forth in this section. This section is enacted pursuant to California Government Code Section 37380 for the purpose of establishing alternate procedures thereto and exempting the city

from the provisions of subsections (b)(2), (b)(3) and (b)(4) thereof. Except with respect to leases in excess of fifty-five years, the provisions of this section shall not be deemed in any way to restrict the city's authority to enter into other forms of leases.

(b) A lease in excess of fifty-five years of property owned, held or controlled by the city, may be authorized by the city council in accordance with the following procedures:

(1) Any lease entered into pursuant to this section shall be authorized by resolution of the city council. For leases of Publicly Accessible Recreation and City Service Property, the resolution authorizing a lease requires the affirmative vote of at least five council members.

(2) Prior to adopting a resolution authorizing a lease, the city council shall hold a public hearing. Notice of the time and place of the hearing shall be published once not less than six days prior to the public hearing, in the official newspaper of the city.

(3) The city shall not be required to engage in a competitive bid process for the award of such lease; provided, that at the time of adopting the resolution authorizing the lease the city council makes a determination that entering the lease without engaging in a competitive bid process is in the best interests of the city.

(4) Any such lease shall be subject to periodic review by the city and shall take into consideration the then market conditions. Pursuant to California Government Code Section 37380(b)(1), the city council hereby establishes that the lease provisions which will periodically be reviewed, at a minimum, shall be those provisions specifying the rent to be paid pursuant to the lease, and such other provisions as may be indicated by the city council at the time of authorizing the lease. The periodic reviews shall occur in accordance with a schedule to be contained in the lease. The periodic review may be in the form of either an express review of the terms by the city council or its designee, or in the form of a procedure contained in the lease for automatic adjustments of the terms in response to market conditions. It is the intent of this provision that inclusion of inflationary adjustments, cost of living adjustments, reappraisals or other similar forms of automatic adjustments shall satisfy the requirements of California Government Code Section 37380(b)(1), without the necessity of a discretionary review by a city officer.

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance does not constitute a "project" with the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or

decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney