

FILE NO. 001965

ORDINANCE NO. **15-01**

[Administrative Code Revision - Chapter 23 – Real Property Transactions]

Ordinance Amending Articles I, II, III, IV, V, VI, and VII of Chapter 23 of the San Francisco Municipal Code by Amending, Repealing, and Renumbering Various Sections Regarding Real Property Transactions.

Note: Additions are *italic; Times New Roman*; deletions are ~~strikethrough italic; Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Chapter 23 of the San Francisco Administrative Code is hereby amended by amending the following Articles and Sections, to read as follows:

ARTICLE I

IN GENERAL

SEC. 23.1. DIRECTOR OF PROPERTY TO CONDUCT SALES, LEASES, ACCEPTANCES, ETC. AND OTHER REAL ESTATE TRANSACTIONS.

Generally. ~~Pursuant to Sections 7.400, 7.401, 7.402 of the Charter, The Director of Property is the head of the Real Estate Department, who shall perform his or her duties in accordance with Section 2A.110 of this Code. Except as otherwise set forth in Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter and by Sections 2A.173 and 23.36 of this Code, or as otherwise provided by the Charter or this Code, each department, board or commission of the City and County shall conduct all negotiations through the Director of Property for purchasing, acquiring, accepting, exchanging, leasing, renting, selling, granting, conveying and relinquishing any real property or interest therein, required for the Acquisition, Conveyance or Lease of any Real Property required for use or owned by the City and County, except as otherwise specifically provided by the Charter. in accordance with the provisions of this Chapter.~~

1 **Applicability of ~~Section~~ Chapter.** The provisions of this ~~Section shall apply to all lands and~~
2 ~~easements required for City and County purposes acquired by purchase, gift, devise, bequest,~~
3 ~~dedication or otherwise and also apply to the relinquishment of any city owned real property or~~
4 ~~interest therein caused or to be caused by the closing or abandonment of streets and easements~~
5 Chapter shall apply to all Real Property Acquired, Conveyed or Leased by or for City purposes,
6 except as otherwise ~~specifically~~ provided by the Charter or this Code.

7 **Approval of Ordinances, ~~etc.~~ Resolutions.** The Director of Property must recommend for
8 approval ~~All~~ all resolutions and ordinances involving transactions ~~covered by this Section must be~~
9 ~~approved by the Director of Property before adoption or enactment.~~ provided for in this Chapter
10 before adoption by the Board of Supervisors.

11 **Inapplicability of ~~Section~~ Chapter.** This ~~Section~~ Chapter shall not ~~affect~~ apply to the sale
12 of ~~real property and improvements~~ Real Property for delinquent taxes or assessments, ~~and shall~~
13 ~~not affect~~ the granting of regulatory permits or franchises to use public streets, or the awarding of
14 contracts by the Department of Parking and Traffic for the management or operation of City-owned
15 parking garages.

16 **~~SEC. 23.1 1. SALE OR EXCHANGE OF REAL PROPERTY.~~**

17 ~~Any real property owned by the City and County, excepting lands for parks and squares, may be~~
18 ~~sold on the recommendation of the department responsible for the administration of such property.~~
19 ~~When the Board of Supervisors, by resolution, may authorize such sale and determine that the public~~
20 ~~interest or necessity demands, or will not be inconvenienced by such sale, the Director of~~
21 ~~Administrative Services shall make a preliminary appraisal of the value of such property. The Director~~
22 ~~shall advertise by publication the time and place of such proposed sale. The Director shall forthwith~~
23 ~~report to the department head concerned and to the Supervisors the amount of any and all tenders~~
24 ~~received. The Supervisors may authorize the acceptance of the highest and best tender, or they may, by~~
25 ~~resolution, direct that such property be sold at public auction, date of which shall be fixed in the~~

1 ~~resolution. No sale other than a sale at public auction shall be authorized by the Supervisors unless the~~
2 ~~sum offered shall be at least 90 percent of the preliminary appraisal of such property hereinbefore~~
3 ~~referred to.~~

4 ~~The Director of Administrative Services may, in lieu of sale, arrange for the trading of any real~~
5 ~~property proposed to be sold for other property required by the department in charge thereof, on the~~
6 ~~recommendation of the officer, board or commission in charge of such property and the authorization,~~
7 ~~by resolution, of the Board of Supervisors.~~

8 **~~SEC. 23.2. ACCEPTANCE OF DEEDS BY DIRECTOR OF PROPERTY AND ASSISTANT~~**

9 ~~The Director of Property and the Assistant Director of Property of the City and County are~~
10 ~~hereby severally authorized and directed to accept and consent to deeds or grants to the City and~~
11 ~~County and to sign the required certificate of acceptance provided thereof.~~

12 ~~The Director of Property shall record a certified copy of the resolution from which this Section~~
13 ~~was derived in each county wherein any interest in or easement upon real property is being or is to be~~
14 ~~acquired by the City and County.~~

15 **CHAPTER DEFINITIONS.**

16 **Chapter Definitions.** *As used in this Chapter, the following initially capitalized terms shall*
17 *have the meanings ascribed to them in this Section:*

18 *"Acquire" shall mean to acquire, accept, purchase, or exchange an easement or fee title in*
19 *Real Property. "Acquisition" shall have a correlative meaning.*

20 *"City" shall mean the City and County of San Francisco.*

21 *"Charter" shall mean the Charter of the City and County of San Francisco.*

22 *"Code" shall mean the Administrative Code of the City and County of San Francisco.*

23 *"Competitive Bidding Process" or "Competitive Bidding Procedures" shall mean a request*
24 *for proposals, request for qualifications, or other publicly noticed competitive solicitation with*
25 *specified criteria for selection.*

1 *"Convey" shall mean to convey, sell, transfer, grant, or relinquish an easement or fee title in*
2 *Real Property. "Conveyance" shall have a correlative meaning.*

3 *"Lease" shall mean a lease, sublease, or other means of granting a right to occupy or use Real*
4 *Property, and shall also include a license, permit to enter, use permit or other similar instrument.*

5 *"Real Estate Department" shall mean the Real Estate Division of the Department of*
6 *Administrative Services.*

7 *"Real Property" shall mean any interest in land or improvements, including an easement,*
8 *Lease, or fee interest.*

9 **~~SEC. 23.3. REAL ESTATE DEPARTMENT GENERALLY AUTHORITY, ETC., TO COLLECT~~**
10 **~~RENTS; EXCEPTIONS.~~**

11 ~~*Pursuant to Section 7.402 of the Charter, the Real Estate Department of the City and County is*~~
12 ~~*authorized and directed to collect all rents due under leases of City and County owned real property*~~
13 ~~*and improvements, except Water Department lands leased for agricultural purposes.*~~

14 **CONVEYANCE OF REAL PROPERTY.**

15 *The Director of Property may Convey any Real Property owned by the City upon*
16 *recommendation of the department responsible for the administration of such Real Property, excepting*
17 *park lands pursuant to Charter Section 4.113(2) or where a Conveyance of such Real Property would*
18 *violate the terms of any gift, trust, deed restriction, bond covenant, or other covenant or restriction*
19 *under which the City holds the Real Property. Such Conveyance may be made after the Board of*
20 *Supervisors, by resolution, determines that the public interest or necessity demands, or will not be*
21 *inconvenienced by such Conveyance, and approves the Conveyance. If the Conveyance is a*
22 *Competitive Bidding Process or a public auction, the Board shall approve and confirm by resolution*
23 *any such Conveyance after such Competitive Bidding Process or auction process is complete. The*
24 *Board's resolution authorizing a Conveyance shall set forth the means of Conveyance, whether by*
25 *public auction, Competitive Bidding Process or such other means of disposition as the Board may*

1 authorize by resolution. The Board of Supervisors may authorize such Conveyance by resolution
2 without advertisement, public auction, or Competitive Bidding Process if it determines that an auction
3 or Competitive Bidding Process is impractical or impossible, including, for example only and not by
4 way of limitation, when the Real Property is not capable of independent development, will be
5 exchanged for other Real Property, or when the Board determines that a negotiated direct Conveyance
6 of the Real Property will further a proper public purpose.

7 Before the Board of Supervisors approves a Conveyance, the Director of Property shall
8 appraise the fair market value of such Real Property and give the notices required by California
9 Government Code Section 54220 et seq. or any other applicable provision of state law. The Director of
10 Property shall also advertise by publication the proposed Conveyance if the Conveyance will be by
11 public auction or Competitive Bidding Process, for an appropriate period as determined by the
12 Director of Property. Every Conveyance other than a sale at public auction or through a Competitive
13 Bidding Process shall be for a sales price of at least 90 percent of the Director of Property's appraisal
14 of such Real Property, except where the Board determines either that (i) a lesser sum will further a
15 proper public purpose, or (ii) based on substantial evidence in the record, the terms and conditions of
16 such Conveyance are reflective of the fair market value of the Real Property notwithstanding the
17 appraisal.

18 **SEC. 23.4. ~~REAL ESTATE DEPARTMENT GENERALLY - FEES FOR COLLECTION.~~**

19 ~~To defray the cost of rendering the collection services authorized by the preceding Section and~~
20 ~~for managing the renting of such property, the Real Estate Department shall be entitled to the following~~
21 ~~fees, which fees shall be deducted from the rentals as they are received and be deposited to the credit of~~
22 ~~the Real Estate Department:~~

23 ~~(a) Rents up to and including \$50 per month, each per month: \$.75~~

24 ~~(b) Rents over \$50 per month and not exceeding \$300, each per month: 3%~~

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1 ~~(c) Rents over \$300 per month and not exceeding \$1,000 per month, each per month: \$10.00~~

2 ~~(d) Rents over \$1,000 per month, each per month: \$15.00~~

3 **ACCEPTANCE OF DEEDS BY DIRECTOR OF PROPERTY AND ASSISTANT.**

4 The Director of Property and the Assistant Director of Property of the City are hereby each
5 authorized to accept and consent to deeds or other instruments granting Real Property to the City that
6 are approved by the Board of Supervisors and to sign the required certificate of acceptance relating
7 thereto. The Director of Property shall record a certified copy of the resolution from which this Section
8 was derived in each county wherein any Real Property is owned by or is to be Acquired by the City.

9 **~~SEC. 23.5. REAL ESTATE DEPARTMENT GENERALLY—FEES FOR NEGOTIATING~~**
10 **~~LEASES.~~**

11 ~~For negotiating leases, the Real Estate Department shall be entitled to charge five percent of~~
12 ~~the first year's rent or a minimum charge of \$5 for each transaction, which charges shall be deducted~~
13 ~~from the first month's rent and credit of the Real Estate Department; provided, that the maximum~~
14 ~~charge to be made pursuant to this Section shall be \$50 for each transaction. In addition to the charges~~
15 ~~provided for in this Section, there shall be paid to the Real Estate Department, by the department for~~
16 ~~whose benefit any lease is made, the cost of all advertising charges and other expenses incident to the~~
17 ~~making of such leases.~~

18 **EXPENSES OF REAL ESTATE DEPARTMENT IN CONNECTION WITH**
19 **LEASES, ACQUISITIONS AND CONVEYANCES.**

20 The Real Estate Department shall be entitled to payment of reasonable expenses in connection
21 with negotiating Leases, Conveyances, Acquisitions, managing City owned Real Property, consulting
22 with departments, and incidental work performed under the provisions of this Chapter. The department
23 concerned shall pay the Real Estate Department for such expenses by interdepartmental work order or
24 other means.

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1 **SEC. 23.6. ~~REAL ESTATE DEPARTMENT GENERALLY - DEPOSIT OF MONEYS.~~**

2 ~~All moneys received by the Real Estate Department in payment of rents, except for the charges~~
3 ~~mentioned in Sections 23.4 and 23.5 of this Code, shall be deposited in the proper funds to the credit of~~
4 ~~the various departments having control of the City and County owned leased real property and~~
5 ~~improvements.~~

6 **SEC. 23.6 1. ~~LEASES AND RENTAL AGREEMENTS; POSSESSORY INTEREST TAXES.~~**

7 ~~All agreements to lease or rent real property situated in the City and County of San Francisco~~
8 ~~and owned by the City and County of San Francisco or any agency thereof shall be governed by~~
9 ~~Section 6.63 1.~~

10 **SEC. 23.6 2. ~~TAXABLE POSSESSORY INTERESTS IN TAX EXEMPT REAL PROPERTY;~~**
11 **~~REPORT OF CHANGE OF OWNERSHIP.~~**

12 ~~Reports of leases of property situated in the City and County of San Francisco and owned by the~~
13 ~~City and County of San Francisco or any agency thereof shall be governed by Section 6.63 2.~~

14 **SEC. 23.6 3. ~~SALE OR LEASE OF PUBLIC UTILITY PROPERTY.~~**

15 The Board of Supervisors shall have power to ~~lease~~ Lease or ~~sell~~ Convey any public utility
16 or any part thereof; provided that any resolution or other measure involving the ~~lease~~ Lease or
17 ~~sale~~ Conveyance of any public utility or part thereof, ~~except as~~ excepting those Leases or
18 Conveyances provided for in Sections ~~23.1 1 and 23.25 1~~ 23.3 and 23.36 of this Code, or any
19 ordinance granting any new franchise for the operation of any public utility whose franchise
20 has expired, or is about to expire, must be referred and submitted to a vote of the electors of
21 the City ~~and County~~ at the election next ensuing not less than 60 days after the adoption of
22 such ordinance, and shall not go into effect until ratified by a majority of the voters voting
23 thereon.

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1 ARTICLE II

2 INTERDEPARTMENTAL TRANSFER OF REAL PROPERTY

3 SEC. ~~23.7~~ 23.10. "DEPARTMENT" CONSTRUED.

4 For ~~the~~ purposes of this Article, the word "department" shall include the Board of
5 ~~Education of the City and County when properties of the City and County acquired or constructed~~
6 ~~Trustees of the San Francisco Unified School District when Real Property of the City used, acquired or~~
7 ~~designated for school purposes from City and County funds~~ ~~are~~ is concerned.

8 SEC. ~~23.8~~ 23.11. POWERS GRANTED ~~PUBLIC COMMISSION, ETC.,~~ DEPARTMENTS BY
9 CHARTER OR CODE NOT ABRIDGED.

10 The provisions of this Article shall not be construed to abridge, modify or alter the
11 powers granted to ~~the Public Utilities Commission, pursuant to the provisions of Section 7.402 of the~~
12 ~~Charter, or any powers granted any department~~ any department or commission by any other
13 provisions of the Charter or the Code.

14 SEC. ~~23.9~~ 23.12. TRANSFER AUTHORIZED; GROUNDS FOR TRANSFER.

15 Whenever any ~~real property, whether improved or unimproved,~~ Real Property belonging to
16 the City ~~and County~~ is no longer used advantageously by the department under whose
17 jurisdiction it is, or when any such ~~property~~ Real Property can be more advantageously used by
18 a department other than the department under whose jurisdiction it is, the ~~real property,~~
19 ~~including any improvements thereon,~~ Real Property may be transferred to the jurisdiction of ~~such~~
20 ~~the~~ department which can more advantageously use the same ~~and for the purpose of transferring~~
21 ~~jurisdiction of such real property,~~ in accordance with the provisions of this Article ~~shall be observed.~~

22 SEC. ~~23.10~~ 23.13. FILING REQUEST FOR TRANSFER ~~WITH MAYOR.~~

23 The officer, board or commission in charge of the department which desires to have
24 ~~real property~~ Real Property transferred to it shall file with the Mayor ~~and the Director of Property~~ a
25 request in writing ~~that for the transfer shall be made,~~ which request shall contain a description of

1 the desired ~~property~~ Real Property and state the specific purposes for which the ~~property~~ Real
2 Property is to be used by the requesting department.

3 **SEC. 23.11 23.14. REFERRAL OF TRANSFER REQUEST TO DIRECTOR OF PROPERTY'S**
4 **PROPERTY; DIRECTOR'S REPORT.**

5 ~~Upon~~ Within 30 days after receipt of the request required by the preceding Section ~~being~~
6 ~~received by the Mayor, within 30 days he or she shall refer the same to~~, the Director of Property ~~for~~
7 ~~a report as to the estimated value of the property and shall prepare a report for the Mayor and the~~
8 ~~requesting department of the estimated fair market value of the Real Property, the character of the~~
9 ~~improvements thereon and an evaluation as to whether, in the opinion of the Director of~~
10 ~~Property, the same Real Property can be advantageously used by the requesting department~~
11 ~~desiring the same transferred for the purposes specified in the request. The Director of Property~~
12 ~~shall make his or her report to the Mayor within 10 days after the receipt of the same.~~

13 **SEC. 23.12 23.15. MAYOR'S CONSENT TO TRANSFER; CONSENT OF DEPARTMENT**
14 **HAVING JURISDICTION.**

15 If, on receipt of the ~~report required to be filed as provided by the preceding Section, the~~
16 ~~Mayor shall be of the opinion that the property can be advantageously used by the department desiring~~
17 ~~the same, he or she~~ Director of Property's report, the Mayor believes that the department requesting
18 the transfer can advantageously use the Real Property, the Mayor shall request the department
19 under whose jurisdiction it is, to consent to the transfer of the ~~property~~ Real Property to the
20 department desiring the transfer, ~~and if. If the first~~ second-mentioned department consents to
21 the transfer within 30 days, the Mayor shall recommend to the Board of Supervisors that it
22 order the ~~property~~ Real Property transferred ~~to the department desiring the same~~, sending to the
23 Board with the request such data regarding the ~~property~~ Real Property as he or she has
24 received from the Director of Property. No ~~property~~ Real Property shall be transferred from one
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1 department to another without the consent of the department having jurisdiction over the ~~same~~
2 Real Property, except as provided by ~~this Article~~ Section 25.18 below.

3 **SEC. ~~23.13~~ 23.16. RESOLUTION AUTHORIZING TRANSFER.**

4 Upon receiving the ~~request from the Mayor as provided by the preceding Section that the~~
5 ~~property be transferred~~ Mayor's recommendation that the Real Property be transferred and the
6 consent of the department having jurisdiction, the Board of Supervisors shall ~~give consideration to~~
7 consider the same, ~~and if~~. If the Board ~~shall determine~~ determines that the ~~property~~ Real Property
8 is no longer necessary or advantageous to the department having jurisdiction ~~of the same~~ and
9 can be more advantageously used by the requesting department ~~asking for the same~~, the Board
10 shall, by resolution, order a transfer of the ~~same~~ Real Property to the requesting department. Any
11 such transfer may be made without limit or for a limited period ~~to be~~ or under other conditions
12 stated in the resolution.

13 **SEC. ~~23.14~~ 23.17. TRANSFER NOT TO VIOLATE TRUST.**

14 No ~~property which has been acquired by the City and County or by any department thereof as a~~
15 ~~gift for any specific purpose~~ Real Property shall be transferred under this Article if the transfer
16 would ~~be a violation of the trusts upon which the property is held~~ violate the terms of any gift, trust,
17 deed restriction, bond covenants, or other covenants or restrictions under which the City holds the Real
18 Property.

19 **SEC. ~~23.15~~ 23.18. ~~PROCEDURE FOR MAKING~~ TRANSFER WITHOUT MAYOR'S OR**
20 **DEPARTMENT'S CONSENT.**

21 If, upon receipt of the ~~report from the Director of Property, the Mayor shall be of the opinion~~
22 Director of Property's report, the Mayor believes that the department having jurisdiction over the
23 ~~property~~ Real Property continues to have advantageous use therefor, ~~or shall be of the opinion~~
24 that the ~~property~~ Real Property cannot be more advantageously used by a ~~department other than~~
25 the requesting department ~~having jurisdiction~~, or should the department having jurisdiction

1 refuse or neglect to consent to the requested transfer, ~~or should there be a concurrence of such~~
2 ~~Mayor's opinion and departmental refusal or neglect to consent, the Mayor shall thereupon the Mayor~~
3 ~~shall~~ transmit his or her report of the circumstances to the Board of Supervisors, together with
4 the ~~original~~ request for transfer and the ~~report of the Director of Property rendered pursuant to the~~
5 ~~provisions of Sections 23.11 of this Code~~ Director of Property's report relating thereto. Such
6 transmittal shall be made by the Mayor ~~not later than 30~~ within 60 days after ~~his or her~~ receipt of
7 the ~~report made by the~~ Director of ~~Property~~ Property's report.

8 Upon receipt of the transmittal from the Mayor, the Board of Supervisors or a
9 committee thereof shall hold a public hearing thereon, at which all interested departments and
10 individuals shall be given an opportunity to be heard.

11 ~~Subsequent to~~ After such hearing, ~~should if~~ the Board of Supervisors ~~find~~ finds that the
12 department having jurisdiction over such ~~property~~ Real Property no longer needs or has
13 advantageous use therefor, or ~~find~~ finds that the ~~property~~ Real Property can be used more
14 advantageously by the ~~requesting~~ department ~~requesting transfer thereof~~, the Board may, by
15 resolution, order that the jurisdiction of such ~~property~~ Real Property be transferred to the
16 ~~requesting department making request therefor~~.

17 Any such transfer may be made without limit or for a limited period ~~to be expressed or~~
18 ~~under other conditions stated in the resolution~~.

19 **SEC. ~~23.16~~ 23.19. TRANSMITTAL AND ACTION ON TRANSFER OF RESOLUTION RECORD**
20 **OF TRANSFER.**

21 When the Board of Supervisors ~~shall adopt~~ adopts any resolution transferring any
22 ~~property~~ Real Property from one department to another ~~as provided by~~ under this Article, the
23 Director of Property shall keep a copy of the resolution ~~shall be forthwith delivered to the Director~~
24 ~~of Property, who shall keep the same~~ in his or her office and make the necessary record of the
25 transfer.

1 **SEC. ~~23.17~~ 23.20. TRANSFERS BETWEEN UTILITIES- PAYMENT.**

2 ~~Transfers of properties between utilities under the jurisdiction of the Public Utilities~~
3 ~~Commission and other departments shall be paid for on the basis of historical cost; or, when such data~~
4 ~~is not available, at a~~ Transfers of Real Property pursuant to this Article shall be paid for at the current
5 fair market value as determined by the Director of Property, unless otherwise directed by the
6 Board of Supervisors by resolution, provided that the Public Utilities Commission shall be paid at least
7 the historical cost of such Real Property.

8 **ARTICLE III**

9 **LEASES WHEN CITY IS ~~LESSEE~~ TENANT**

10 **SEC. ~~23.18~~ 23.25. DIRECTOR OF PROPERTY TO ~~BE HEAD OF REAL ESTATE~~**
11 ~~DEPARTMENT AND TO MAKE LEASES.~~

12 Each department of the City ~~and County~~ authorized by the approval of bond issues or by
13 annual or supplemental appropriation ordinances to ~~lease land and improvements~~ Lease Real
14 Property needed for the purposes of such department shall make such ~~leases~~ Leases through
15 the Director of Property, except as otherwise specifically provided by the Charter. ~~The Director~~
16 ~~of Property is the head of the Real Estate Department or this Code.~~

17 **SEC. ~~23.19~~ 23.26. YEAR-TO-YEAR AND SHORTER LEASES ~~AND OTHER AGREEMENTS.~~**

18 ~~Where~~ The Director of Property shall have the authority to enter into the following Leases on
19 behalf of the City as tenant: (i) on a year-to-year or shorter tenancy where the rental or other
20 consideration to be paid for the City ~~and County's~~ occupancy or use of ~~such property~~ Real
21 Property within the City and County of San Francisco is \$1,000 ~~or less per month, the Director of~~
22 ~~Property may execute a written lease, permit, contract or other agreement on behalf of the City and~~
23 ~~County for a year to year or shorter term. Where the term of a lease, permit, contract or other~~
24 ~~agreement is less than one month, the Director of Property may execute such lease, permit, contract or~~
25 ~~other agreement on behalf of the City and County.~~

1 \$5,000 or less per month, and (ii) where the term of a Lease will not exceed 31 days, including without
2 limitation month-to-month Leases.

3 The Director of Property may include in any ~~lease, permit, contract or other agreement~~
4 Lease authorized by this Section an appropriate ~~hold harmless~~ indemnity agreement for the
5 purpose of providing for the ~~City and County's~~ City's occupancy or other use of such ~~property~~
6 Real Property (including, without limitation, conducting ~~environmental assessments, soil borings,~~
7 ~~test wells and any other property investigations~~ environmental investigations and assessments),
8 subject, however, to written approval as to form by the City Attorney and written
9 recommendation by the head of the department concerned.

10 The Director of Property shall determine the rental or other consideration to be paid for
11 all such ~~property~~ Real Property and shall obtain from the Controller written certification that
12 funds are available for such ~~lease, permit, contract or other agreement~~ Lease. The department
13 concerned shall give written notice to the Director of Property when such ~~lease, permit, contract~~
14 ~~or other agreement~~ Lease is terminated by the City ~~and County~~.

15 **SEC. ~~23.20~~ 23.27. EXECUTION OF LEASES; RESOLUTION AUTHORIZING LEASE.**

16 Except as otherwise ~~specifically~~ provided by the Charter, ~~all other leases of land and~~
17 ~~improvement entered into by the City and County, as lessee, shall be executed by the Mayor or the~~
18 ~~Mayor's Director of Finance and the Clerk of Section 23.26 above, or other provision of this Code, the~~
19 Board of Supervisors, ~~pursuant to resolutions adopted by the Board of Supervisors. Before adoption,~~
20 ~~such resolutions must be approved by the Director of Property and shall approve all Leases on behalf~~
21 ~~of the City as tenant by resolution. Before adoption, the head of the department concerned shall~~
22 ~~recommend any such resolution for approval by the Board of Supervisors. All such Leases shall be~~
23 ~~executed by the Director of Property or as otherwise directed by resolution of the Board of Supervisors.~~

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1 ~~SEC. 23.21. EXPENSES OF REAL ESTATE DEPARTMENT IN CONNECTION WITH LEASES.~~

2 ~~The real estate department shall be entitled to payment of expenses in connection with~~
3 ~~negotiating leases and incidental work performed under the provisions of this Article. The department~~
4 ~~concerned shall pay the Real Estate Department for such expenses by interdepartmental work order or~~
5 ~~other means.~~

6 **ARTICLE IV**

7 **LEASES WHEN CITY IS LESSOR LANDLORD**

8 **SEC. 23.30. LEASE OF REAL PROPERTY.**

9 Except as provided by Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter and by
10 Sections 2A.173 and 23.36 and of this Code, or as otherwise provided by the Charter or this Code, the
11 Director of Property shall have the charge of the Lease of Real Property owned by the City. When the
12 head of any department in charge of Real Property reports to the Director of Property that certain land
13 is not required for the purposes of the department, the Board of Supervisors, by resolution, may
14 authorize the Lease of such Real Property. The Director of Property shall arrange for such Lease to the
15 highest responsible bidder in accordance with Competitive Bidding Procedures, unless the Board of
16 Supervisors has by resolution found that such Competitive Bidding Procedures are impractical or
17 impossible or has authorized other means of award in furtherance of a proper public purpose. The
18 Director of Property shall collect rents due under such Lease.

19 ~~SEC. 23.22 23.31. AUTHORITY OF DIRECTOR TO LEASE PROPERTY WITH RENTAL~~
20 ~~VALUE LESS THAN ONE THOUSAND DOLLARS; DETERMINATION OF VALUE YEAR-TO-~~
21 ~~YEAR AND SHORTER LEASES.~~

22 ~~When~~ If any department in charge of ~~city~~ City-owned ~~real property~~ Real Property
23 requests the Director of Property to ~~lease~~, Lease City-owned Real Property, the Director of
24 Property shall have the authority to enter into the following Leases on behalf of the City as landlord:
25 (i) on a year-to-year or shorter tenancy, ~~City owned land or improvements having a rental value of~~

1 ~~\$1,000 or less per month and reports to the Director of Property that the property is not required for~~
2 ~~the purposes of the department, the director is hereby authorized and directed to lease such property to~~
3 ~~the highest responsible bidder on a year-to-year or shorter tenancy. The Director of Property shall~~
4 ~~determine the rental value of such property and is hereby authorized to execute such leases in behalf of~~
5 ~~the City and County. Where~~ where such Real Property has a fair market rental value of \$5,000 or less
6 per month, and (ii) where the term of a Lease will not exceed 31 days, including without limitation
7 month-to-month Leases. In addition, where, in the opinion of the Director of Property, the ~~leasing~~
8 Leasing of such ~~property~~ Real Property for landscaping or gardening serves a public purpose,
9 the Director of Property may ~~lease~~ Lease such ~~property~~ Real Property at a nominal rental, on a
10 year-to-year or shorter tenancy, and on such other terms and conditions as the Director of
11 Property may require.

12 ~~All moneys received as rental from real property leased under this Section shall be collected by~~
13 ~~the Director of Property and deposited in the City treasury to the credit of the proper fund. Within 10~~
14 ~~days after awarding the lease~~ Within 10 days after entering into any Lease under this Section, the
15 Finance Committee of the Board of Supervisors shall be notified by the Director of Property as
16 to the terms and conditions of such ~~leases~~ Lease.

17 ~~The provisions of this Section shall not apply to the leasing of City and County Water~~
18 ~~Department lands for agricultural purposes.~~

19 **SEC. ~~23.23~~ 23.32. ADVISORY REVIEW BY DIRECTOR OF PROPERTY.**

20 Any commission, board or department that, under the Charter or this Code, is given
21 exclusive power to ~~lease real property~~ Lease Real Property under its control and management
22 may submit any proposed ~~lease~~ Lease to the Director of Property for review and advisory
23 recommendations and may request the Director of Property to determine ~~property value or fair~~
24 market rental rates to aid and assist in negotiating, extending or renewing such ~~leases. It is~~
25 ~~recommended~~ Leases. It is the policy of the Board of Supervisors that all commissions, boards and

1 departments that negotiate and administer such ~~leases~~ Leases submit all proposed ~~leases~~ Leases
2 which have a term, including extension options, of five years or more, or which would produce
3 more than \$500,000 in revenue over such term, to the Director of Property for review and
4 advisory recommendations before final approval of any such ~~lease~~ Lease and, as to such ~~leases~~
5 Leases, request the Director of Property to determine ~~land value or fair~~ market rental rates, ~~as~~
6 ~~required,~~ to aid and assist in negotiating, extending or renewing such ~~leases~~. ~~This~~
7 ~~recommendation is made in order to provide more uniformity in the City's leasing~~ Leases. The purpose
8 of this policy is to achieve greater consistency and coordination in the City's Leasing practices, to
9 increase the financial return to the City from its ~~leases~~ Leases and to avoid unnecessary
10 duplication of effort and expense in the ~~leasing of City real property~~ Leasing of City Real Property.

11 **SEC. ~~23.24~~ 23.33. COMPETITIVE BIDDING PROCEDURES.**

12 To the extent that any ordinance, *Code provision* or Charter provision gives the City, or
13 any of its commissions, boards or departments, power to award ~~leases~~ Leases without
14 competitive bidding, ~~it is recommended the Board of Supervisors recommends~~ that, notwithstanding
15 such power, all such ~~leases~~ Leases that are expected to produce more than ~~\$1,500~~ \$2,500 per
16 month in revenue be awarded ~~to the highest responsible bidder~~ in accordance with ~~competitive~~
17 ~~bidding procedures~~ Competitive Bidding Procedures, unless such ~~bidding procedures~~ Competitive
18 Bidding Procedures are impractical or impossible.

19 **SEC. ~~23.25~~ 23.34. LEASE REPORTING.**

20 Each commission, board and department that is empowered by the Charter, City
21 ordinance, *this Code* or State statute to ~~lease~~ Lease City-owned ~~real property~~ Real Property shall,
22 within 10 days after the close of each quarter of a fiscal year ("fiscal quarter"), file with the
23 Budget Analyst for the Board of Supervisors a written report of all ~~leases~~ Leases of ~~real property~~
24 Real Property awarded during the preceding fiscal quarter which were not submitted for
25 approval by the Board of Supervisors.

1 The report shall contain the following information for each ~~lease~~ Lease:

- 2 1. ~~Lessee's~~ Tenant's name.
- 3 2. Term of the ~~lease~~, Lease including any extension options.
- 4 3. Rental amount, including, if applicable, percentage rent and rent escalation or
- 5 adjustment provisions.
- 6 4. Location of ~~leased property~~ Leased Real Property.
- 7 5. If unimproved ~~property~~ Real Property, dimensions and area of ~~property~~ Real
- 8 Property.
- 9 6. If improved ~~property~~ Real Property, description of improvements and floor area of
- 10 ~~leased~~ Leased space.
- 11 7. Use to be made of premises by ~~lessee~~ the tenant.

12 The Budget Analyst shall review each report and, ~~if any lease shall appear to be defective~~
13 ~~or deficient in any respect or to produce inadequate rental income, shall report that fact to the Board of~~
14 ~~Supervisors, together with such comments and recommendations~~ may report his or her comments and
15 recommendations to the Board of Supervisors, as the Budget Analyst ~~shall deem~~ deems appropriate.

16 **SEC. 23.35. RE-LEASE REAL PROPERTY TO EXISTING TENANT ON A NEGOTIATED**
17 **BASIS.**

18 *Notwithstanding any other provision in this Chapter, where the City Acquires Real Property*
19 *which at the time of Acquisition is under a Lease to a tenant from the previous owner, the Director of*
20 *Property may, subject to the approval by resolution of the Board of Supervisors, upon expiration of*
21 *such Lease, negotiate at a fair market rental a new Lease for such Real Property with the same tenant*
22 *on a term designated by the Board of Supervisors, until such time as required for the purposes of the*
23 *department in charge of such Real Property.*

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1 **SEC. 23.36. LEASE OF REAL PROPERTY UNDER RECREATION AND PARKS COMMISSION**
2 **AND PUBLIC UTILITIES COMMISSION JURISDICTION.**

3 *In addition to the delegation of authority set forth in Sections 4.112, 4.113, 4.114, 4.115, and*
4 *B3.581 of the Charter and by Section 2A.173 of this Code, (i) pursuant to Charter Section 4.113, the*
5 *Recreation and Parks Commission shall have the power to Lease Real Property under its jurisdiction,*
6 *subject to approval by the Board of Supervisors as required by Charter Section 9.118 and any other*
7 *applicable provision of the Charter or this Code, and (ii) pursuant to Charter Section 4.112, the Public*
8 *Utilities Commission shall have exclusive power to Lease Real Property under its jurisdiction, subject*
9 *to approval by the Board of Supervisors as required by Charter Section 9.118 and any other applicable*
10 *provision of the Charter or this Code.*

11 **SEC. 23.37. REAL ESTATE DEPARTMENT TO COLLECT RENTS.**

12 *The Real Estate Department is authorized and directed to collect all rents due under Leases of*
13 *City owned Real Property, except as otherwise provided in the Charter or this Code. All moneys*
14 *received by the Real Estate Department in payment of rents shall be deposited in the proper funds to*
15 *the credit of the various departments having control of the City-owned Leased Real Property.*

16 **SEC. 23.38. AGREEMENTS FOR PRIVATE USE OF CITY PROPERTY; POSSESSORY**
17 **INTEREST TAXES.**

18 *All agreements permitting the use for private gain of Real Property situated in the City and*
19 *County of San Francisco and owned by the City, including any agency thereof, shall contain a clear*
20 *and unequivocal understanding that a possessory interest subject to taxation may be created and that*
21 *the party with the right to use such Real Property shall pay any and all possessory interest taxes levied*
22 *upon his or her interest therein pursuant to an assessment made by the Assessor. However, the Board*
23 *of Supervisors may by resolution specifically authorize and approve to be included in such agreement a*
24 *provision for the City's assumption of the payment of such possessory interest taxes, in whole or in*
25 *///*

1 part, or for an offset against revenues otherwise due and payable to the City under such agreement in
2 an amount equal to all or a portion of such possessory interest taxes.

3 Such agreement shall also provide that the holder of such interest shall, upon request, furnish
4 the information required in Section 23.39 of this Code to the City within 30 days of any transaction that
5 is subject to the reporting requirements of such Section.

6 Within 60 days after execution of an agreement pertaining to the use of City Real Property as
7 described above, the agency executing such agreement on behalf of the City shall forward, or cause the
8 holder of such interest to forward, a copy of the agreement to the Assessor of the City and County of
9 San Francisco, as required in Section 23.39 below.

10 As used in this Section and in Section 23.39 below, the term "agreement" shall mean any
11 written contract, instrument or other document permitting the possession, occupancy or use of City
12 Real Property including, but not limited to, Leases, concession agreements, franchise agreements and
13 management agreements.

14 **SEC. 23.39. TAXABLE POSSESSORY INTERESTS IN TAX-EXEMPT REAL PROPERTY;**
15 **REPORT OF AGREEMENT AND CHANGE OF OWNERSHIP OR EXTENSION OF**
16 **AGREEMENT.**

17 In accordance with Revenue and Taxation Code Section 480.5, every owner of tax-exempt Real
18 Property shall report to the Assessor of the City and County of San Francisco the creation, renewal,
19 extension, assignment, sublease or other transfer of any interest granted under an agreement to use
20 such Real Property, within 60 days of the transaction. The report shall be on such form as the Assessor
21 may prescribe and shall include, at a minimum, all of the following:

22 (a) The name and address of the owner.

23 (b) The names and addresses of all other parties to the transaction, including an identification
24 of each party and of his or her interest under the agreement.

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1 (c) The type of transaction, whether creation, renewal, extension, sublease, assignment,
2 transfer or otherwise.

3 (d) A description of the Real Property, which is the subject of the agreement.

4 (e) The effective date of the transaction.

5 (f) A summary of the essential terms of the transaction, including, but not limited to, all of the
6 following:

7 (1) The consideration for the interest, whether paid in money or otherwise.

8 (2) The term of the agreement, including any renewal or extension options.

9 (3) If a sublease or other agreement subject to an underlying agreement, the original terms,
10 remaining term and consideration paid for the master lease or other master agreement.

11 (4) If an assignment or other transfer, the original term, remaining term, and the
12 consideration paid for the underlying Lease or agreement.

13 **~~SEC. 23.25-1. LEASE OF REAL PROPERTY.~~**

14 ~~(a) When the head of any department in charge of real property shall report to the Board of~~
15 ~~Supervisors that certain land is not required for the purposes of the department, the Board of~~
16 ~~Supervisors, by resolution, may authorize the lease of such property. The Director of Administrative~~
17 ~~Services shall arrange for such lease for periods up to 10 years to the highest responsible bidder at the~~
18 ~~highest monthly rent. The Director shall collect rents due under such lease.~~

19 ~~(b) The Board of Supervisors shall have the power, by resolution, to provide a longer term for~~
20 ~~leases executed under this Section than that provided for in Subparagraph (a).~~

21 **SEC ~~23.25-2~~ 23.40. SALE OR LEASE OF PARK LAND; USE OF CERTAIN PARK LAND**
22 **FOR THE CONSTRUCTION OF WATER QUALITY AND SEWERAGE FACILITIES.**

23 (a) Whenever lands ~~which~~ that are or shall be used or intended for use for parks or
24 squares are no longer needed for park or recreational purposes, ~~the City may dispose of such~~
25 ~~lands may be disposed of,~~ or may abandon or discontinue their use for park purposes ~~may be~~

1 ~~abandoned or discontinued~~; provided that nothing herein shall be construed to authorize the
2 discontinuance or abandonment of the use of such lands, or any change in the use thereof
3 ~~which that~~ will cause the reversion of such lands to private ownership, or cause the forfeiture
4 of the ownership thereof in fee by the City ~~and County of San Francisco, or as authorizing, or to~~
5 ~~authorize~~ the discontinuance of the use of park lands acquired in any proceeding wherein a
6 local assessment based on benefits was or shall be levied to provide funds for such
7 acquisition; and provided further that the general laws of the State of California authorizing
8 municipal corporations to abandon or to discontinue the use of land for park purposes,
9 authorizing the disposition of such lands, and providing procedures therefor and for matters
10 relating thereto, shall be applicable to the City and ~~County of San Francisco and~~ to all lands held
11 or used by it for park purposes and shall govern and control exclusively in respect thereto. For
12 the purposes of this subsection, all lands, including but not limited to, playgrounds, athletic
13 facilities, and lands purchased with open space acquisition and park renovation funds, but
14 excluding the Great Highway, the land described in Subsection (b) below, and lands
15 administered by the Recreation and Park Department pursuant to agreements with other City
16 departments or entities, placed under the jurisdiction of the Recreation and Park Department
17 shall be deemed used or intended for use for park purposes.

18 (b) Upon approval by the Recreation and Park Commission, that parcel of land south
19 of the Zoo and between the Great Highway Extension and Skyline Boulevard set forth and
20 described in parcel map entitled "Parcel Map Showing Certain Park Land Proposed to be
21 Used Jointly," recorded August 12, 1975 in Parcel Map Book Number One at page 96 in the
22 office of the Recorder of the City and County of San Francisco, may be used for the
23 construction of water quality and sewerage facilities, and any facilities so constructed shall be
24 under the control, management, and direction of the Department of Public Works. Any

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1 recreation or zoo facilities constructed on said parcel shall remain under the control,
2 management, and direction of the Recreation and Park Commission.

3 **SEC. ~~23.25-3~~ 23.41. TRANSFER OF PARK AND OTHER LANDS TO THE NATIONAL**
4 **PARK SERVICE OF THE UNITED STATES DEPARTMENT OF THE INTERIOR.**

5 (a) Upon approval by the Recreation and Park Commission, the Board of Supervisors
6 may by resolution authorize transfer by deed to the National Park Service of the United States
7 Department of the Interior for inclusion in the Golden Gate National Recreation Area as
8 presently defined and delimited by Public Law 92-589, 86 Stat. 1299, of any interest which the
9 City ~~and County of San Francisco~~ has in lands restricted to use for recreation or park purposes
10 or otherwise under the exclusive control, management or direction of the Recreation and Park
11 Commission, except the premises and grounds of the Palace of the Legion of Honor and
12 Lincoln Park Golf Course, provided that ~~said~~ such deed shall be executed under the restriction
13 that ~~said the transferred~~ lands be reserved *in perpetuity for recreation or park purposes* by the
14 National Park Service of the United States Department of the Interior ~~in perpetuity for recreation~~
15 ~~or park purposes with a right of reversion upon breach of said~~ and shall grant the City a power of
16 termination upon a breach of such restriction, and provided further that said transfer shall be
17 executed under such conditions and restrictions as shall prevent the reversion of any portion
18 of ~~said~~ such lands to any person or entity other than the City ~~and County of San Francisco~~.

19 (b) Upon approval of the officer, board or commission in charge of the department
20 responsible for the administration of any interest which the City ~~and County of San Francisco~~
21 has in ~~property~~ Real Property not referred to in Subsection (a), the Board of Supervisors may
22 by resolution authorize transfer of such interest by deed to the National Park Service of the
23 United States Department of the Interior for inclusion in the Golden Gate National Recreation
24 Area as presently defined and delimited by Public Law 92-589, 86 Stat. 1299, provided that
25 said deed shall be executed under the restriction that said lands be reserved by the National

1 Park Service of the United States Department of the Interior in perpetuity for recreation or
2 park purposes with a power of termination upon breach of said restriction, and provided
3 further that said transfer shall be executed under such conditions and restrictions as shall
4 prevent the reversion of any portion of said lands to any person or entity other than the City
5 *and County of San Francisco.*

6 ***ARTICLE V***

7 ***LEASE OF CITY OWNED PROPERTY ON A NEGOTIATED BASIS***

8 ***SEC. 23.26. AUTHORITY OF THE DIRECTOR TO RE-LEASE REAL PROPERTY***
9 ***ENCUMBERED BY A LEASE FROM A PREVIOUS OWNER TO THE SAME TENANT, UPON***
10 ***EXPIRATION THEREOF, ON A NEGOTIATED BASIS.***

11 *Notwithstanding any other provision in this Chapter, where the City and County acquires real*
12 *property for a public project which at the time of acquisition is under a lease to a tenant from the*
13 *previous owner, the Director of Property may, subject to the approval by ordinance of the Board of*
14 *Supervisors, upon expiration of such lease, negotiate at a fair market rental a new lease for such*
15 *property with the same such tenant on a month-to-month or shorter basis, until such time as required*
16 *for the purposes of the department in charge of such property.*

17 ***SEC. 23.26A. AUTHORITY OF THE DIRECTOR TO MANAGE REAL PROPERTY ACQUIRED***
18 ***BY EMINENT DOMAIN FOR THE MOSCONE CENTER EXPANSION PROJECT.***

19 *Notwithstanding Section 23.26, for all leaseholds in the properties to be acquired by the City by*
20 *eminent domain for the Moscone Center Expansion Project, known as Assessor's Block 3724, Lots 18,*
21 *35, 36, 37, 38, 68, 69, and 70, after the City acquires the landlords' interests in the properties, and*
22 *where the lessee delivers possession of the leased premises to the City prior to March 31, 1998, the*
23 *Director of Property is authorized to terminate any lease and waive that lessee's obligations under the*
24 *leasehold without approval by ordinance of the Board of Supervisors. Notwithstanding Section 23.26,*
25 *the Director of Property is further authorized to act in his or her discretion, and without approval by*

1 ~~ordinance of the Board of Supervisors, to extend lease terms and obligations of all leaseholds in the~~
2 ~~properties after March 31, 1998, provided that such extension shall not interfere with the scheduled~~
3 ~~demolition of the improvements on the properties.~~

4 ~~ARTICLE VI~~ ARTICLE V

5 LOT LINE WINDOW AGREEMENTS

6 SEC. ~~23.27~~ 23.45. AUTHORITY OF DIRECTOR OF PROPERTY ~~TO APPROVE AND~~
7 ~~EXECUTE LOT LINE WINDOW AGREEMENTS.~~

8 An owner of ~~real property~~ Real Property adjoining ~~real property~~ Real Property of the City
9 ~~and County of San Francisco~~ may request that the City ~~and County~~ consent to openings in
10 building walls on the owner's ~~property~~ Real Property that are closer to the common property line
11 than the distances prescribed in the San Francisco Building Code by filing with the Director of
12 Property an original and two copies of a written application, together with plans, specifications
13 and other supporting documents, and paying the required application fee. Upon such filing,
14 the Director of Property shall investigate the application and consult with the department that
15 has jurisdiction over the ~~City and County property~~ Real Property. Copies of the application and
16 its supporting documents shall be delivered by the Director of Property to the Department of
17 City Planning and the Bureau of Building Inspection for ~~such~~ review and comment as that
18 department and that bureau may deem appropriate. If the department having jurisdiction over
19 the ~~property~~ Real Property approves and the Director of Property concludes that it is in the best
20 interest of the City ~~and County~~ to give the requested consent, the Director of Property is
21 authorized to approve and execute a lot line window agreement which complies with all of the
22 provisions of this Article.

23 SEC. ~~23.28~~ 23.46. DETERMINATION OF VALUE ~~OF LOT LINE WINDOW PRIVILEGE.~~

24 The Director of Property shall determine a monthly fee for the privilege of installing the
25 openings in building walls that are made possible by the ~~City and County's~~ City's consent. The

1 monthly fee shall be based upon an appraisal by the Director of Property of the enhancement
2 in fair market value of the building owner's ~~real property~~ *Real Property* that will result from
3 installation of the proposed openings in building walls.

4 If the original monthly fee based upon the Director of Property's appraisal ~~shall be~~ *is*
5 more than \$50, the agreement shall provide for payment by the building owner, in advance, of
6 the monthly fee so determined by the Director of Property. The monthly fee may, at the
7 Director of Property's discretion, be payable monthly, quarterly, semiannually or annually. The
8 agreement shall contain a provision for annual adjustment of the monthly fee to reflect
9 increases or decreases in the Consumer Price Index for all Urban Consumers for the San
10 Francisco-Oakland Metropolitan Area and a provision for a redetermination of the monthly fee
11 by the Director of Property, upon the same appraisal basis as the original fee determination,
12 at the end of each five-year period.

13 If the original monthly fee based upon the Director of Property's appraisal ~~shall be~~ *is* \$50
14 or less, a one-time fee of \$1,000 shall be paid by the building owner and no monthly fees shall
15 be payable.

16 **SEC. ~~23.29~~ 23.47. REQUIREMENTS FOR LOT LINE WINDOW AGREEMENTS.**

17 All lot line window agreements shall comply with the following requirements:

18 1. The building to which the agreement relates shall comply with the Building Code
19 and all other applicable codes, ordinances and regulations of the City ~~and County~~ and with all
20 applicable federal and State laws and regulations.

21 2. The building shall be constructed or remodeled in conformity with the plans and
22 specifications submitted with the application for a lot line window agreement and shall be used
23 for the purposes stated in the application.

24 3. The agreement shall be terminable at any time, with or without cause ~~and without~~
25 *penalty*, by either party. The termination will not be effective, however, unless the terminating

1 party gives *at least 90 days prior* written notice of termination which is mailed or delivered to the
2 other party ~~at least as long before the termination date as the period for which rent is paid, except~~
3 ~~that, if a one time fee is paid in lieu of monthly fees or if the property owner breaches the agreement,~~
4 ~~the City and County may terminate by mailing or delivering notice of termination at least 10 days~~
5 ~~before the termination date.~~ The notice of termination shall contain the legal descriptions of both
6 properties and shall be acknowledged by the terminating party. The notice of termination may
7 be recorded by either party at any time and, after the termination date, the recorded notice
8 shall be conclusive proof of termination of the agreement.

9 4. The building owner shall agree that, in the event the agreement is revoked, the
10 openings consented to by the agreement shall be protected or closed, as required by the
11 Building Code, and the building otherwise modified as may be necessary to comply with those
12 Building Code requirements that become applicable because of protecting or closing the
13 openings.

14 5. The building owner shall indemnify the City ~~and County~~, its officers, employees and
15 agents, against all liabilities that may result from or be connected with the agreement.

16 6. During the life of the agreement, the building owner shall maintain comprehensive
17 personal liability insurance with limits satisfactory to the *Risk Manager of the City and County*
18 and with the City ~~and County~~, its officers, agents and employees named as additional insureds

19 7. The agreement shall be binding upon and inure to the benefit of the parties, their
20 successors and assigns.

21 8. The agreement shall be executed by both parties and shall contain the legal
22 descriptions of both properties. The Director of Property shall execute the agreement for and
23 on behalf of the City ~~and County~~, provided the agreement has been previously approved by the
24 City Attorney and the head of the department having jurisdiction over the ~~City and County's~~

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1 ~~property~~ City's Real Property. The agreement shall be acknowledged by both parties and the
2 Director of Property shall cause the agreement to be recorded.

3 **SEC. ~~23.30~~ 23.48. FEES AND FEE PAYMENTS.**

4 The application fee which is to accompany each application shall be ~~set from time to time~~
5 ~~by the Director of Property, subject to approval by resolution~~ \$2,500, unless changed by appropriate
6 action of the Board of Supervisors. If the Director of Property ~~shall determine~~ determines, after
7 his investigation of the application, that the application fee is inadequate to cover the cost of
8 preparing and processing an agreement, the Director of Property shall notify the building
9 owner of the additional amount that is required. The additional amount shall be paid by the
10 building owner as a prerequisite to preparation and processing of an agreement by the Real
11 Estate Department ~~of the City and County.~~

12 The Real Estate Department ~~of the City and County~~ is authorized to collect the fees due
13 under lot line window agreements ~~and shall deposit such fees to the credit of the department having~~
14 ~~jurisdiction over the City's Real Property.~~

15 The application fees and any additional amounts required to cover the cost of preparing
16 and processing agreements shall be deposited to the credit of the Real Estate Department.
17 ~~The fees paid under any lot line window agreement shall be deposited to the credit of the department~~
18 ~~having jurisdiction over the City and County's property.~~

19 **~~ARTICLE VII~~ ARTICLE VI**

20 **LABOR REPRESENTATION PROCEDURES IN HOTEL AND**
21 **RESTAURANT DEVELOPMENTS IN WHICH THE CITY HAS**
22 **AN ONGOING PROPRIETARY INTEREST**

23 **SEC. ~~23.31~~ 23.50. FINDINGS AND DECLARATIONS.**

24 (1) In the course of managing ~~real property~~ Real Property that it owns or in otherwise
25 carrying out its functions in the public interest, the City and County of San Francisco

1 (hereinafter "City") occasionally participates in ~~real property~~ Real Property development as a
2 landlord, proprietor, lender or guarantor, facing the same risks and liabilities as other business
3 entities participating in such ventures. For example, the City sometimes ~~leases~~ Leases its ~~real~~
4 ~~property~~ Real Property under a percentage ~~lease~~ Lease, or otherwise invests or pledges its
5 resources in real estate development projects as a landlord, a lender or a guarantor. When it
6 does, the City has an ongoing proprietary interest in that development, and, thus, has a direct
7 interest in its performance.

8 (2) In such situations, the City must make prudent business decisions, as does any
9 private business entity, to ensure efficient and cost-effective management of its business
10 concerns, and to maximize benefit and minimize risk. One of those risks is the possibility of
11 labor/management conflict arising out of labor union organizing campaigns. Such conflict can
12 adversely affect the City's investment in real estate developments or other circumstances in
13 which it has a proprietary business interest by causing delay in the completion of projects,
14 and/or by reducing revenues or increasing costs of the project when they are completed.

15 (3) These risks are heightened in the hotel and restaurant industry because they are
16 so closely related to tourism—a mainstay of San Francisco's economy. Labor strife in hotel or
17 restaurant projects in which the City is an investor or other economic participant can
18 jeopardize the operation of related tourist and commercial facilities, as well as the City's
19 national reputation as a tourist and convention destination. To minimize that risk in
20 circumstances where costly labor/management conflict has arisen in the past, the City enacts
21 this Article which requires that certain specified employers in the hotel and restaurant industry
22 shall agree, as a condition of the City's economic involvement in a hotel or restaurant project,
23 to nonconfrontational and expeditious procedures by which their workers can register their
24 preference regarding union representation.

25 ///

1 (4) A major potential source of labor/ management conflict that threatens the
2 economic interests of the City as a participant in development projects is the possibility of
3 economic action taken by labor unions against employers in those developments when labor
4 unions seek to organize their workers over employer opposition to unionization. Experience of
5 municipal and other investors has demonstrated that organizing drives pursuant to formal and
6 adversarial union certification processes often deteriorate into protracted and acrimonious
7 labor/management conflict. That conflict potentially can result in construction delays, work
8 stoppages, picketing, strikes and more recently, in consumer boycotts or other forms of
9 "corporate campaigns" that can generate negative publicity and reduced revenues that
10 threaten the interests not only of the immediate "target" of such tactics, i.e., the employer, but
11 of other investors in the development, and also the City's special interests identified herein.

12 (5) These risks of potential labor/management conflict are particularly acute when
13 labor unions seek to organize workers in hotels and restaurants, as labor relations in the
14 hospitality industry in San Francisco have proven especially contentious, and have resulted in
15 many protests, boycotts and other activities which have disrupted the business of the hotel or
16 restaurant and the tourist industry and the downtown hotel area.

17 (6) In view of these concerns, the City deems it necessary to approach with great
18 caution any economic participation in a hotel or restaurant project if the City retains a
19 proprietary interest, either as landlord, lender or guarantor. The City finds that cautionary
20 approach to be particularly appropriate given other possible factors present in such
21 developments, such as the City's sometimes special proprietary interests or other special
22 concerns identified herein, and/or their complex financing schemes, the possible use of
23 scarce land resources, as well as the dependence of such projects on public "good will" and
24 the special vulnerability of such projects to consumer boycotts, etc.

25 ///

1 (7) One way to reduce the City's risk where it has a proprietary interest in a hotel or
2 restaurant project is to require, as a condition of the City's investment or other economic
3 participation, that employers operating in the hotel or restaurant project agree to a lawful,
4 nonconfrontational alternative process for resolving a union organizing campaign. That
5 alternative process is a so-called "card check," wherein employee preference regarding
6 whether or not to be represented by a labor union to act as their exclusive collective
7 bargaining representative is determined based on signed authorization cards. Private
8 employers are authorized under existing federal law to agree voluntarily to use this procedure
9 in lieu of NLRB-supervised election procedures.

10 (8) The Board of Supervisors finds based on local history that compliance with these
11 procedures will help reduce the possibility of labor/management conflict jeopardizing the City's
12 proprietary interest in a hotel or restaurant project. To ensure that card check procedures are
13 required only to the extent necessary to ensure the goal of minimizing labor/management
14 conflict, an employer who agrees to such procedures and performs its obligations under a
15 card check agreement will be relieved of further obligation to abide by those procedures if a
16 labor organization engages in economic action such as striking, picketing or boycotting the
17 employer in the course of an organizing drive and at a site covered by this Article.

18 (9) The sole purpose of this Article is to protect the City's proprietary interest in a
19 particular hotel or restaurant project covered hereby. This Article is not enacted to favor any
20 particular outcome in the determination of employer preference regarding union
21 representation, nor to skew the procedures in such a determination to favor or hinder any
22 party to such a determination. Likewise, this Article is not intended to enact or express any
23 generally applicable policy regarding labor/management relations, or to regulate those
24 relations in any way, but is intended only to protect the City's proprietary interest in certain
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1 narrowly prescribed circumstances where the City commits its economic resources and/or its
2 related interests are put at risk by certain forms of labor/management conflict.

3 **SEC. ~~23.32~~ 23.51. DEFINITIONS.**

4 For purposes of this Article, the following definitions shall apply:

5 (1) "Card check agreement" means a written agreement between an employer and
6 a labor organization providing a procedure for determining employee preference on the
7 subject of whether to be represented by a labor organization for collective bargaining, and if
8 so, by which labor organization to be represented, which provides, at a minimum, the
9 following:

10 (a) Determining employee preference regarding union representation shall be by a
11 card check procedure conducted by a neutral third party in lieu of a formal election;

12 (b) All disputes over interpretation or application of the parties' card check
13 agreement, and over issues regarding how to carry out the card check process or specific
14 card check procedures shall be submitted to binding arbitration;

15 (c) Forbearance by any labor organization from economic action against the
16 employer at the worksite of an organizing drive covered by this Article, and in relation to an
17 organizing campaign only (not to the terms of a collective bargaining agreement), so long as
18 the employer complies with the terms of the card check agreement;

19 (d) Language and procedures prohibiting the labor organization or the employer
20 from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a
21 bargaining representative.

22 (2) "City contract" means a ~~lease~~ Lease, management agreement, service
23 agreement, loan, bond, guarantee, or other similar agreement to which the City is a party and
24 in which the City has a proprietary interest.

25 ///

1 (3) "Collective bargaining agreement" means an agreement between an employer
2 and a labor organization regarding wages, hours and other terms and conditions of
3 employment of the employer's employees. For purposes of this Article, a collective bargaining
4 agreement does not include a card check agreement as defined herein.

5 (4) "Developer" means any person, corporation, association, general or limited
6 partnership, limited liability company, joint venture or other entity which does or which
7 proposes to purchase, ~~lease~~ Lease, develop, build, remodel or otherwise establish a hotel or
8 restaurant project.

9 (5) "Economic action" means concerted action initiated or conducted by a labor
10 union and/or employees acting in concert therewith, to bring economic pressure to bear
11 against an employer, as part of a campaign to organize employees or prospective employees
12 of that employer, including such activities as striking, picketing, or boycotting. A lawsuit to
13 enforce this Article is not "economic action."

14 (6) "Employer" means any developer, manager/operator or subcontractor who
15 employs individuals in a hotel or restaurant in a hotel or restaurant project.

16 (7) "Hotel or restaurant project" means a development project or facility in which the
17 City has a proprietary interest and which contains a hotel or restaurant. For purposes herein a
18 "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of
19 the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility
20 that has as its principal purpose the sale of food and beverage for primarily on-site
21 consumption, including any such facility operating within or as part of another facility, such as
22 a stadium, hotel or retail store. A hotel or restaurant project, as defined herein, includes a
23 mixed-use development project in which the City has a proprietary interest which contains a
24 hotel or restaurant, regardless of whether the City's proprietary interest is in the hotel or
25 restaurant portion of such ~~mixed-use~~ mixed-use development or the mixed-use development

1 project as a whole. Notwithstanding the foregoing or anything else contained herein, the
2 requirement in this Article that an employer enter into a card check agreement shall apply only
3 to those employers who employ employees in a hotel or restaurant and shall not apply to
4 those portions of a mixed-use development project which do not contain a hotel or restaurant.

5 (8) "Labor organization" means any organization of any kind, or any agency or
6 employee representation committee or plan, in which employees participate and which exists
7 for the purpose, in whole or in part, of dealing with employers concerning grievances, labor
8 disputes, wages, rates of pay, hours of employment, or conditions of work.

9 (9) "Manager/operator" means any person, corporation, association, limited or
10 general partnership, joint venture or other entity (including a developer) that operates or
11 manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion
12 of the services provided by such hotel or restaurant in a hotel or restaurant project, whether
13 by subcontract or City contract.

14 (10) "Proprietary interest" means any nonregulatory arrangement or circumstance in
15 which the financial or other nonregulatory interests of the City in a hotel or restaurant project
16 could be adversely affected by labor/management conflict or consumer boycotts potentially
17 resulting from a union organizing campaign, in the following circumstances:

18 (i) The City receives significant ongoing revenue (such as rent payments) under a
19 ~~lease~~ *Lease of real property* ~~Real Property~~ owned by the City for the development of a hotel or
20 restaurant project, excluding government fees or tax or assessment revenues, or the like
21 (except for tax revenues under the circumstances specified in (ii)); or

22 (ii) The City receives ongoing revenue from a hotel or restaurant project to pay debt
23 service on bonds or loans provided by the City to assist the development of such hotel or
24 restaurant project (including incremental tax revenues generated by the hotel or restaurant
25 project or the development project in which it is located and used, directly or indirectly, to pay

1 debt service on bonds or to repay a loan by the City where the proceeds are used for
2 development of that hotel or restaurant project or the development project in which it is
3 located);

4 (iii) The City has agreed to underwrite or guarantee the development or operation of
5 a hotel or restaurant project, or loans related thereto.

6 In addition to the circumstances described in (i) - (iii) above, the City shall be deemed to have
7 a proprietary interest in a hotel or restaurant project if the City determines or an interested
8 party demonstrates prior to the effective date of the subcontract or City contract pursuant to
9 which a hotel or restaurant will be operated in a hotel or restaurant project that there is a
10 significant risk that the City's financial or other nonregulatory interest in a hotel or restaurant
11 project could be adversely affected by labor/management conflict or consumer boycotts
12 potentially resulting from a union organizing campaign except that no circumstance or
13 arrangement shall be considered "financial or non-regulatory" under this definition if it is such
14 that arises from the exercise of regulatory or police powers such as taxation, (except as
15 provided in (ii) above), zoning or the issuance of permits and licenses.

16 (11) "Subcontract" means any ~~lease~~ Lease, sublease, management agreement or
17 other similar agreement between a developer or a manager/operator and a subcontractor
18 which contemplates or permits the subcontractor to operate or manage all or a portion of a
19 hotel or restaurant in a hotel or restaurant project.

20 (12) "Subcontractor" means any person, corporation, association, limited or general
21 partnership, limited liability company, joint venture or other entity that enters into a subcontract
22 with a developer or manager/operator.

23 (13) "Substantial amendment" to a Pre-Existing Agreement, for purposes of the
24 exemption for Employers operating before the effective date of this Chapter in Section
25 ~~23.34(b)(2)~~ 23.53(b)(2) and Section Two of ~~this~~ Ordinance ~~[Ord. No. 108-99]~~, means an

1 amendment to or renewal or extension of a Pre-Existing Agreement that provides for or
2 permits any of the following:

3 (a) A change in use within the scope of this Article (i.e., which provides for the
4 operation of a hotel or restaurant);

5 (b) An increase in square footage, seating or rooms of more than 25%; except
6 neither of the following, by themselves, shall constitute a substantial amendment:

7 (i) Addition of outside seating or patio dining which increases the total seating or
8 square footage devoted to seating by less than 25%;

9 (ii) An increase in space for purpose of parking or storage; or

10 (c) A new ~~lease~~ Lease period of greater duration than the period provided in the Pre-
11 Existing Agreement.

12 **SEC. ~~23.33~~ 23.52. POLICY, REQUIREMENTS AND PROCEDURES TO MINIMIZE**
13 **LABOR/MANAGEMENT CONFLICT WHEN CITY HAS PROPRIETARY INTEREST.**

14 (a) **General Policy.** The Board of Supervisors declares as a matter of general policy
15 that when the City retains or acquires a proprietary interest in a hotel or restaurant project, it is
16 essential for the protection of the City's investment and/or business interests to require that
17 employers operating a hotel or restaurant in such hotel or restaurant project agree to abide by
18 card check procedures for determining employee preference on the subject of labor union
19 representation, as specified in this Article.

20 (b) **Primary Obligations.** Pursuant to the policy stated in Subsection (a), the
21 following requirements are imposed, except no Employer, Developer or Manager/Operator
22 shall be responsible for obligations under this Article if that person or entity is otherwise
23 exempt from those obligations pursuant to Section ~~23.34(b)~~ 23.53(b), or if the City does not
24 have a Proprietary Interest in the subject Hotel or Restaurant Project:

25 **///**

1 (1) **Employers.** An employer of employees working in a hotel or restaurant in a hotel
2 or restaurant project, shall:

3 (i) Enter into a card check agreement, as specified in this Article, with a labor
4 organization which requests such an agreement for the purpose of seeking to represent those
5 employees before executing the subcontract or City contract pursuant to which it will operate
6 a hotel or restaurant in a hotel or restaurant project;

7 (ii) If the parties are unable to agree to the terms of a card check agreement within 60
8 days of the commencement of such negotiations, they must enter into expedited binding
9 arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In
10 such proceedings, to be conducted by an experienced labor arbitrator selected as provided by
11 the rules of the American Arbitration Association or equivalent organization, the arbitrator shall
12 consider any model card check agreement provided by the City and/or to prevailing practices
13 and the terms of card check agreements in the same or similar industries, except that such
14 card check agreement must include the mandatory terms identified in Section ~~23.32(1)~~
15 ~~23.51(1)~~;

16 (iii) Comply with the terms of that card check agreement and this Article; and

17 (iv) Include in any subcontract which contemplates or permits a Subcontractor to
18 operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or
19 to provide a service essential to the operation of such hotel or restaurant, a provision requiring
20 that subcontractor to comply with the requirements provided in this Article. This provision shall
21 be a material and mandatory term of such subcontract, binding on all successors and assigns,
22 and shall state (modified as necessary to accommodate particular circumstances):

23 "The City and County of San Francisco has enacted an Ordinance at Chapter 23,
24 Article ~~VI~~ of its Administrative Code, commencing at Section ~~23.34~~ 23.50, which may
25 apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To

1 the extent [Subcontractor] or its successors or assigns employs employees in a hotel or
2 restaurant in [this facility] within the scope of that Ordinance, [Subcontractor] hereby
3 agrees as a material condition of this [Subcontract] to enter into and abide by a Card
4 Check Agreement with a Labor Organization or Organizations seeking to represent
5 [Subcontractor's] employees, if and as required by that Article, and to otherwise fully
6 comply with the requirements of that Article. [Subcontractor] recognizes that, as
7 required by that Article, it must enter into a Card Check Agreement with a Labor
8 Organization(s) as specified by that Article before executing this [Subcontract], and that
9 being party to such a Card Check Agreement(s) is a condition precedent of rights or
10 obligations under this [Subcontract].”

11 Notwithstanding the requirements provided in (i) - (iv), any employer who has in good
12 faith fully complied with those requirements will be excused from further compliance as to a
13 labor organization which has taken economic action against that employer at that site in
14 furtherance of a campaign to organize that employer's employees at that site for collective
15 bargaining. This clause shall not be interpreted, however, to apply to economic action against
16 an employer at other locations where that employer does business, or at any location for
17 purposes other than organizing the employer's employees; nor shall economic action by one
18 labor organization excuse an employer from the obligations of this Article or a card check
19 agreement as to a different labor organization.

20 (2) **Developers and Manager/Operators.** Any developer or manager/operator of a
21 hotel or restaurant project must:

22 (i) To the extent it employs employees in a hotel or restaurant in a hotel or restaurant
23 project, abide by the requirements stated in Subsection (1);

24 (ii) Include the provision specified in (1)(iv) in any subcontract, modified as necessary
25 to accommodate the circumstances of that particular subcontract;

1 (iii) Refrain from executing a subcontract by which an employer subject to (1) is
2 authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until
3 that employer has entered into a card check agreement with a labor organization, as required
4 in (1);

5 (iv) Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s)
6 and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project
7 which may be subject to the requirements of (1), as soon as the developer or
8 manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later
9 than 21 days before requiring an employer to sign a subcontract. This notification
10 requirement applies only to hotels or restaurants or employers that will operate in a Hotel or
11 Restaurant Project, as defined herein, and only where the City's proprietary interest is based
12 on a ~~lease~~ Lease, a loan, or a guarantee, as specified in Section ~~23.32(10)(i) - (iii)~~ 23.51(10)(i) -
13 (iii);

14 (v) Inform any prospective subcontractor, that if the subcontractor acts as an
15 employer subject to the requirements of (1), it must enter into a card check agreement
16 pursuant to this Article before it may execute the subcontract, and as a condition precedent to
17 any rights or obligations under such document;

18 (vi) Take reasonable steps to enforce the ~~of~~ terms of any subcontract requiring
19 compliance with this Article. To the extent a developer or manager/ operator is found to have
20 intentionally aided, abetted or encouraged a subcontractor's failure to comply with such a
21 provision or the terms of this Article, either by action or inaction, that developer or
22 manager/operator shall be jointly and severally liable for all damages awarded pursuant to
23 Section ~~23.35~~ 23.54.

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1 (3) **The City.**

2 (i) **City Contracts.** Any City contract executed under the authority of any
3 commission, department, authority or officer of the City, which contemplates the use or
4 operation of a hotel or restaurant in a hotel or restaurant project must include a provision
5 requiring that any developer or operator/manager of a hotel or restaurant project pursuant to
6 that City contract, and any employer(s) operating in such hotel or restaurant project, agree to
7 comply with the requirements imposed in Subsections (1) and (2), as essential consideration
8 for the City entering into the City contract.

9 (ii) **Model Card Check Agreement.** To facilitate the requirements imposed by this
10 Section, the City's Mayor or the Mayor's designee may provide a model recommended card
11 check agreement that includes the mandatory terms identified in Section ~~23.32(1)~~ 23.51(1) and
12 which provides the maximum protection against labor/management conflict arising out of an
13 organizing drive, and make such model recommended agreement available to parties
14 required to enter into such agreement. The City may also prepare guidelines establishing
15 standards and procedures related to this Article. Notwithstanding this provision regarding the
16 preparation of a model card check agreement or related guidelines, this Article shall be self-
17 executing, and shall apply in all circumstances and to the extent provided in this Article, in the
18 absence of or regardless of such model card check agreement or guidelines.

19 (iii) **Requests for Proposals ("RFPs").** Any commission, department, authority or
20 officer of the City which issues a request for proposals or invitation to bid or similar document
21 regarding development of City ~~property~~ Real Property which could result in a proposal
22 contemplating operation of a hotel or restaurant project after the effective date of this
23 ordinance, must include in such document a summary description of and reference to the
24 policy and requirements of this Article. Failure to include description or reference to this Article

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1 in an RFP or similar document shall not exempt any developer, manager/operator or employer
2 otherwise subject to the requirements of this Article.

3 (c) **Applicability of This Article.** The policy and obligations established above shall
4 apply to particular developers, manager/operators and employers whenever the City has a
5 proprietary interest in a hotel or restaurant project, except as otherwise provided hereunder.
6 The determination whether or not the City has a proprietary interest in a hotel or restaurant
7 project, and if so, whether an exemption applies under Section ~~23.34(b)~~ 23.53(b), shall be
8 made on a case-by-case basis by the Mayor or the Mayor's designee by applying the
9 standards and principles described herein and any further standards and principles provided
10 in guidelines distributed pursuant to Section ~~23.33(b)(3)(ii)~~ 23.52(b)(3)(ii) hereof. Any party
11 otherwise subject to the terms of this Article because the City has a proprietary interest in a
12 hotel or restaurant project defined in Section ~~23.32(10)(i) — (iii)~~ 23.51(10)(i) - (iii) above that
13 claims an exemption from the terms of this Article under Section ~~23.34~~ 23.53 below shall have
14 the burden of demonstrating that the basis for such exemption is clearly present.

15 **SEC. ~~23.34~~ 23.53. SCOPE AND EXEMPTIONS.**

16 (a) **Scope.** The requirements of this Article apply only to the procedures for
17 determining employee preference regarding whether to be represented by a labor
18 organization for purposes of collective bargaining and/or by which labor organization to be
19 represented. Accordingly, this Article does not apply to the process of collective bargaining in
20 the event a labor organization has been recognized as the bargaining representative for
21 employees of employers subject to this Article. Moreover, nothing in the Article requires an
22 employer or other entity subject to this Article to recognize a particular labor organization; nor
23 does any provision of this Article require that a collective bargaining agreement be entered
24 into with any labor organization, or that an employer submit to arbitration regarding the terms
25 of a collective bargaining agreement.

1 (b) **Exemptions.** The requirements of this Article shall not apply to:

2 (1) Employers employing fewer than the equivalent of 50 full-time or part-time
3 employees, provided that:

4 (i) When a restaurant is located on the same premises as a hotel and routinely
5 provides food or beverage services to the hotel's guests, employees of the restaurant and
6 hotel shall be aggregated for purposes of determining the applicability of this ordinance;

7 (ii) All employees employed in all restaurants which operate under the jurisdictional
8 control of the San Francisco Airport Commission and which are owned, operate or managed
9 by the same owner, operator or manager shall be aggregated for purposes of determining the
10 applicability of this Ordinance; or

11 (2) Employers commencing operation in a hotel or restaurant in a hotel or restaurant
12 project before the effective date of this Ordinance, or a hotel or restaurant project under any
13 subcontract or City contract entered into before the effective date of this ordinance ("pre-
14 existing agreement"). This exemption applies to an Employer and to his or her family for the
15 duration of such Pre-Existing Agreement, unless it is amended during its term resulting in a
16 Substantial Amendment, as defined in Section ~~23.32(13)~~ 23.51(13). This exemption shall apply
17 beyond the expiration of the Pre-Existing Agreement if it is renewed or extended without a
18 change in ownership of the Employer, and without changes resulting in Substantial
19 Amendment, as defined in Section ~~23.32(13)~~ 23.51(13). For purposes of this exemption,
20 "change in ownership" shall mean a change in ownership, from the effective date hereof, of
21 25% or more, unless such change is among members of the same family; or

22 (3) Any employer which is signatory to a valid and binding collective bargaining
23 agreement covering the terms and conditions of employment for its employees at that hotel or
24 restaurant project, or which has entered into a card check agreement with a labor organization
25 regarding such employees which agreement provides at least equal protection from

labor/management conflict as provided by the minimum terms provided in Section ~~23.32(1)~~
~~23.51(1)~~; or

(4) Any hotel or restaurant project where the Mayor or the Mayor's designee determines that the risk to the City's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the City's investment or other nonregulatory interest; or

(5) Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a statewide agency or entity ("public agency") and that public agency would prohibit application of this Article; or

(6) Any hotel or restaurant project where the requirements of this Article would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations.

SEC. ~~23.35~~ 23.54. ENFORCEMENT.

(a) The requirement that employers enter into and comply with card check agreements with labor organizations in the circumstances provided in this Article, and the requirement that developers and manager/operators contractually obligate their successors, assigns or subcontractors to be bound by that former requirement are essential consideration for the City's agreement to any City contract containing that requirement.

(b) The City shall investigate complaints that this Article has been violated or that a card check provision included in a City contract or subcontract pursuant to this Article has been breached, and may take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.

(c) In the event the City brings a civil enforcement action for violation of this Article, any taxpayer or any person or association by or with a direct interest in compliance with this Article may join in that enforcement action as a real party in interest. In the event the City

declines to institute a civil enforcement action for violation of this Article, a taxpayer or directly interested person or association may bring a civil proceeding on its own behalf and on behalf of the City against that employer and seek all remedies available for violation of this Article and/or breach of a card check agreement required by this Article available under state law, including but not limited to monetary, injunctive and declaratory relief. In view of the difficulty of determining actual damages incurred by such a violation, liquidated damages may be awarded at the rate of \$1,000 per day of violation, to be distributed equally between a private plaintiff, if any, and the general fund of the City, unless such liquidated damages award is found to be so excessive in relation to the violator's resources as to constitute a penalty.

(d) Any action challenging the applicability of this Article to a particular employer may be brought only after first seeking an exemption pursuant to Section ~~23.34~~ 23.53, and must be commenced within 60 days after notification that such exemption has been denied by the City.

(e) Notwithstanding anything else contained herein, in no event shall the remedy for a breach of the terms of this Article include termination of any such subcontract or City contract, nor shall any such breach defeat or render invalid or affect in any manner whatsoever the status or priority of the lien of any mortgage, deed of trust or other security interest made for value and encumbering any ~~property~~ Real Property affected by such subcontract or City contract, including, without limitation, any leasehold estate or other interest in such ~~property~~ Real Property or improvements on such ~~property~~ Real Property.

SEC. ~~23.36~~ 23.55. EFFECTIVE DATE AND APPLICATION.

This Ordinance shall become effective 30 days after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any Pre-Existing Agreement to which the City is a party, unless such Pre-Existing Agreement has been Substantially Amended after the effective date of this Ordinance.

///

1 **SEC. ~~23.37~~ 23.56. SEVERABILITY.**

2 If any part or provision of this Ordinance, or the application thereof to any person or
3 circumstance, is held invalid, the remainder of this Ordinance, including the application of
4 such part or provisions to other persons or circumstances, shall not be affected thereby and
5 shall continue in full force and effect. To this end, the provisions of this Ordinance are
6 severable.

7
8 APPROVED AS TO FORM:

9 LOUISE H. RENNE, City Attorney

10
11 By:



12 ELIZABETH A. DIETRICH
13 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 001965

Date Passed:

Ordinance amending Articles I, II, III, IV, V, VI, and VII of Chapter 23 of the San Francisco Administrative Code by amending, repealing, and renumbering various sections regarding real property transactions.

January 2, 2001 Board of Supervisors — PASSED, ON FIRST READING

Ayes: 11 - Ammiano, Becerril, Bierman, Brown, Katz, Kaufman, Leno, Newsom, Teng, Yaki, Yee

January 16, 2001 Board of Supervisors — AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Maxwell, McGoldrick, Leno, Newsom, Peskin, Sandoval, Yee

January 16, 2001 Board of Supervisors — PASSED ON FIRST READING AS AMENDED

Ayes: 11 - Ammiano, Daly, Gonzalez, Hall, Maxwell, McGoldrick, Leno, Newsom, Peskin, Sandoval, Yee

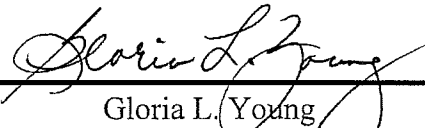
January 22, 2001 Board of Supervisors — FINALLY PASSED

Ayes: 10 - Ammiano, Daly, Gonzalez, Hall, Maxwell, McGoldrick, Leno, Newsom, Peskin, Yee

Absent: 1 - Sandoval

File No. 001965

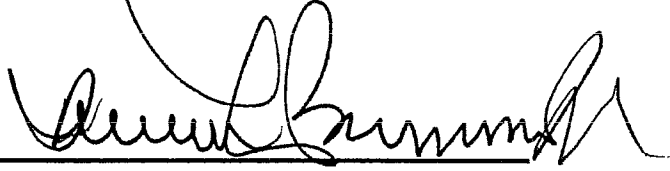
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on January 22, 2001
by the Board of Supervisors of the City and
County of San Francisco.



Gloria L. Young
(Clerk of the Board)



FEB 02 2001
Date Approved



Mayor Willie L. Brown Jr.