

Executive Order No. 100

TO: All Agencies Under the Mayor

FROM: Mayor Michael B. Hancock

DATE: October 5, 2016

SUBJECT: CITY OWNED AND LEASED REAL ESTATE: Acquisition, Disposition, Leasing, and Facility Management, Space Planning and Programming

Purpose: This Executive Order establishes the policy of the City and County of Denver, hereafter referred to as “the City” as to procedures for the evaluation, acquisition, management, leasing and disposition of real property and facilities by the City. Executive Order 100, dated December 23, 2010, “City Owned and Leased Real Estate” and all its memorandum attachments are hereby cancelled and superseded by this Executive Order.

1.0 Applicable Authority: The applicable authority relevant to the provisions and requirements of this Executive Order 100, is found in Section 2.2.10 of the Charter.

2.0 Responsible Authority(s): The Department of General Services, Department of Finance – Division of Real Estate, and the Department of Environmental Health – Environmental Quality Division (EQD).

3.0 Memorandum Attachments: The procedure(s) for implementing this Executive Order shall be defined by Memorandum Attachments to the Executive Order which shall become a part of the Executive Order, including the attached Memorandum 100A, , “Real Estate Division Policy for Leasing to Non-City Entities/Reporting Requirements”, and Memorandum 100B, “Clearance & Release Process for Disposition of City Owned Real Estate”. Further, General Services and the Division of Real Estate (and Environmental Services Division for Chapter 2), which are jointly responsible for the content of this Executive Order, shall have the authority to issue procedural Memorandum attachments relative to this Executive Order.

4.0 General Information and Applicability: All city departments and agencies, including General Fund and Enterprise Fund agencies, (“SUBJECT AGENCIES”) shall comply with the procedures outlined in this Executive Order. Agencies specifically excluded from these provisions are the Denver Water Board, the Department of Aviation, the Denver Art Museum, the Denver Museum of Nature and Science, the Denver Botanic Gardens, and the Denver Zoological Gardens. The City needs and occupies a significant amount of physical space, both for servicing the needs of the citizens of Denver and for the operation and function of city departments and agencies, including but not limited to: rights-of-way, jails, police and fire stations, parks and recreational facilities, wastewater systems and facilities, offices, concessions, customer service facilities, warehouses, maintenance facilities, vacant ground, impound facilities, and parking facilities. It is in the best interest of the City and its citizens that all such real property and other space is acquired or leased and managed in an effective and efficient manner giving due consideration to the use and cost of such real property and space. This

Executive order is applicable to real property acquisitions, dispositions, and exchanges, as well as new or renewing leased space, the expansion of existing space, and the restructuring or remodeling of existing space that would result in increased or decreased space or relocation of employees.

5.0 This Executive Order is divided into the following chapters and subjects:

Chapter 1 – Organization and Functions of the Division of Real Estate

Chapter 2 – Environmental Review for Real Property Acquisition – Environmental Services

Chapter 3 – Centralized Building Maintenance Program

**CHAPTER 1 –
ORGANIZATION AND FUNCTIONS
OF THE DIVISION OF REAL ESTATE**

This Chapter establishes the Division of Real Estate and defines its functions to deal with the needs of the City in the area of acquisition, disposition, exchanging, leasing, space programming and space planning, and uses of real property in accordance with City Charter.

- 1.0 **Establishment of Division:** The Director of Real Estate (“Director”), who is responsible to the Chief Financial Officer, shall head the Division of Real Estate in the Department of Finance.

- 1.1 **Duties and Responsibilities of the Division of Real Estate:** The Division of Real Estate is responsible for real property transactions for all Subject Agencies. The Division of Real Estate shall be utilized in an advisory capacity where powers are vested in other departments or offices by the Charter, ordinances, or directive.
 - 1.1.1 The Director of Real Estate shall appoint and supervise personnel with the necessary expertise to perform the functions of the Division of Real Estate.

 - 1.1.2 In addition to the duties and functions assigned by the Chief Financial Officer and the Mayor, the duties and functions of the Division of Real Estate shall include:
 - a. Informing and updating Subject Agencies as to the real estate policies and procedures and the process for acquiring, disposing and exchanging of real property; the leasing of land, cell towers, office or warehouse space and buildings; and the restructuring remodeling or expansion of existing space that would result in increased or decreased space or relocation of employees.

 - b. Reviewing and advising Subject Agencies on all proposals for real property acquisitions, dispositions, leases, exchanges and for construction or major remodel of buildings located on City real property.

 - c. Providing analysis, recommendations, and implementation strategies to the Interdepartmental Real Estate Operations Committee comprised of the Executive Director of Public Works, Public Works Capital Projects Manager, Capital Improvements Program Manager, Deputy Chief Information Officer, Director of Facilities (General Services), the City Attorney and Citywide Space Planner or their designees. The purpose of the Interdepartmental Real Estate Operations Committee is to coordinate and oversee the successful implementation of moves, adds, and changes within city facilities, the management of property through effective evaluation, management and budgeting of build out costs, schedule and cost of additional space required and by maintaining the best and most efficient use of space to effectively manage occupancy demand.

- d. Conducting negotiations, in conjunction with the Subject Agencies and the City Attorney's Office, for real property leases, acquisitions, condemnations, dispositions, and exchanges in accordance with federal and state law, the City Charter, ordinances, directives and approved projects and budgets. In providing services for the Board of Equalization, in connection with tax deed property, the Division of Real Estate shall do so only with the consent of the Board and in accordance with applicable laws and rules, regulations, directions, and procedures imposed upon or by the Board.
- e. Coordinating with the City Attorney's Office, the Department of Environmental Health, the Department of Finance, the surveyor's office in the Department of Public Works, and other relevant agencies of the desire to acquire, dispose, lease, construct or remodel City and County of Denver property, as needed.
- f. Coordinating with the Managers of Community Planning and Development and the Office of Economic Development or their designees, per process described in Memorandum 100B, to evaluate affordable housing needs as identified in adopted Housing Plan(s), including reviewing potential disposition of City and County of Denver property for affordable housing opportunities prior to disposition and identifying opportunities for acquisition of new property for such uses.
- g. Coordinating with the Department of Public Works, Office of Economic Development, Community Planning and Development, Department of Parks and Recreation and other agencies as appropriate on clearance and release of all disposition of City and County of Denver property per process described in Memorandum 100B. Clearance & Release approval or disapproval forms will be submitted in writing and kept as records with the property file.
- h. Notifying all council members prior to initiating disposition of city property.
- i. Assisting the City Attorney's Office in the preparation, execution, and implementation of contracts and deeds and undertaking such other actions as necessary to complete the acquisition, disposition, lease, or exchange of real property in accordance with authorizations from Subject Agencies and City Council and in accordance with the Division of Real Estate's policies and procedures.
- j. Performing financial analyses and space management of the City's real property portfolio, except for properties whose management is specifically assigned by Charter, ordinance, or order of the Mayor to some other agency or department.
- k. Coordinating with supporting agencies and vendors to manage moves and relocations for City agencies including relocations within City space, from

and to other City buildings, to approved leased facilities and internal agency reorganizations. Relocations require Division of Real Estate approval.

- l. Reviewing requests to modify space including workstations, construction and change to the physical space. Requests are evaluated by the Division of Real Estate and supporting committees for approval prior to engaging other agencies, vendors or contractors. A sample space request form and instructions for moves, adds, or changes is available from the Division of Real Estate. This form is subject to change from time to time as authorized by the Interdepartmental Real Estate Operations Committee.
- m. Procuring appraisals, surveys, title commitments, and other documents for real property as deemed necessary or appropriate and, in conjunction with the City Attorney's office, resolving issues related to these documents.
- n. Providing such other real estate services as may be requested by Subject Agencies.
- o. Inviting and receiving offers to purchase any interest in real property owned by the City and declared surplus in accordance with law and Division of Real Estate policies and procedures.
- p. Anticipating the City's future real estate needs and developing recommendations to meet those needs; making studies and advising and participating on real estate related projects.
- q. Implementing City Sustainability goals, wherever feasible and appropriate, including evaluating the long-term sustainability of potential real property acquisitions and leasing of office, commercial, or warehouse space and buildings.
- r. Providing analysis, recommendations, strategies, and procurement of outside consultant services with regard to space planning for the City.
- s. Recommending and advising the Department of General Services with regard to capital projects within the facilities managed by the Department of General Services.
- t. Consulting where appropriate on financing of City projects that involve City-owned real property.
- u. Serving as staff for the City's Interdepartmental Real Estate Operations Committee.
- v. Notifying the Controller's Office upon the acquisition or disposition of real property for the purpose of recording assets.

- 1.2 **Real Property Contracts and Deeds:** Contracts for the acquisition, disposition, lease, or exchange of City-owned real property or property interests shall be authorized by ordinance or resolution (for tax titles) as required by Charter and ordinance. Deeds and other instruments of conveyance from the City shall be without warranties. All records of contracts and deeds documenting the acquisition, disposition, lease or exchange of City-owned real property or property interests shall be preserved by the Division of Real Estate in a manner deemed appropriate by the City's records manager and readily accessible by Subject Agencies. In addition, all Subject Agencies shall provide, and the Division of Real Estate shall maintain copies of management, concession, lease or use agreements related to City-owned real property.
- 1.3 **Negotiation for Real Property:** The Director or the Director's designee within the Division of Real Estate shall negotiate for the interest, including the fee title, in the property required by or being disposed of by the City. If the Director is unable to negotiate terms for the acquisition that are satisfactory to the city, the City may acquire the interest, including the fee title, under the power of eminent domain as approved and required by ordinance. Successful negotiations for the interest without invoking the power of eminent domain shall be concluded by a contract prepared by the City Attorney.

CHAPTER 2 – ENVIRONMENTAL REVIEW FOR REAL PROPERTY ACQUISITION

This chapter establishes the policy of the City and County of Denver (the City) for environmental evaluation of real property prior to acquisition by the City, in order to minimize liability to the City from the acquisition of contaminated or impaired property.

- 2.0 Goals and Objectives of the Environmental Review:** To require adequate environmental investigation of properties under consideration for acquisition, to avoid acquisition of contaminated or impaired property to the extent possible, to ensure proper management of contaminated property when its acquisition cannot be avoided, to protect the public and workers from unsafe exposure to such contamination or other environmental hazards, and to minimize liability to the City from the acquisition of any contaminated property.
- 2.1 Pre-acquisition Review of Real Property:** The Division of Real Estate and Subject Agencies shall follow this process in acquiring real property.
- 2.1.1** Any real property to be acquired by the City must undergo environmental review by the EQD. The EQD shall determine the level of environmental review required based on legal and engineering standards and on the environmental risk. The environmental review may consist of an evaluation of any environmental documents that may exist related to the proposed property acquisition, public records relating to historical uses of the property, and may require intrusive sampling and other activities on the property. Where environmental information is lacking with respect to improvements on the property, the EQD may request, or elect to perform, appropriate assessments of the improvements.
- 2.1.2** The Subject Agency shall contact the EQD early enough in its planning process for the acquisition to allow adequate environmental investigations to be completed. (Environmental review may require 90 days or more depending on the size of the property and the amount of investigation required.)
- 2.1.3** The Subject Agency shall submit any available American Society of Testing Materials (ASTM) standard Phase I Environmental Site Assessment and/or other environmental information available on the property to the EQD so that a comprehensive review may be performed.
- 2.1.4** Where environmental information is lacking or determined to be out of date, the EQD may request, or elect to perform, an environmental site assessment on the property proposed for acquisition. Site assessment activities shall be in accordance with accepted legal and engineering standards and may include intrusive sampling on and adjacent to the property.
- 2.1.5** Where property proposed for acquisition includes improvements, additional information related to the condition of the improvements will be required, such as

an asbestos assessment, a lead-based paint survey, and a hazardous materials inventory, etc.

2.1.6 The Subject Agency shall provide information related to the future/intended use of the property, to the extent that use is known.

2.2 Recommendation:

2.2.1 The EQD shall advise as to the apparent environmental risk associated with acquisition of property based upon information gathered.

2.2.2 The EQD shall advise whether it thinks the environmental risk is acceptable or not.

2.2.3 If the EQD advises that the environmental risk is acceptable, the property may be acquired in accordance with the other applicable requirements of this executive order.

2.2.4 If the EQD advises that the environmental risk is unacceptable, the EQD shall advise whether further information regarding the environmental condition of the property should be gathered, or address pre-acquisition conditions/considerations to ameliorate any identified impairment, or advise what remedial measures will be necessary to ameliorate the identified impairment and estimate the cost to accomplish such measures.

2.3 Contaminated Property:

2.3.1 If the EQD determines that the property proposed for acquisition is contaminated and action is required to remediate the contaminated property to regulatory standards, the City should avoid acquiring the property, if possible.

2.3.2 If the City decides to acquire the property despite the environmental risks and potential liability then an appropriate acquisition strategy will be determined by a team comprised of representatives of the Subject Agency, Division of Real Estate, the City Attorney, and EQD. The strategy shall take into account the following City policies:

- The Subject Agency shall budget sufficient funds to clean up the property to regulatory standards and to fund other associated liabilities, or find other suitable alternatives that satisfy all legal requirements including budgetary requirements; and
- In order to qualify for the innocent purchaser defense under the Comprehensive Environmental Response, Compensation and Liability Act, it shall be the policy of the City to acquire all contaminated property by purchase or condemnation under its eminent domain authority. The Division

of Real Estate, in conjunction with the City Attorney's Office shall ensure that the City's exercise of its eminent domain authority is properly documented for such acquisitions.

If possible, an ordinance authorizing condemnation shall be sought; or if required by Section 3.2.6.(E) of the Charter, the purchase contract shall be approved by City Council by an ordinance, which shall state that the property is being purchased under threat of condemnation.

Please note that the specifics of storage tank acquisition are addressed in Executive Order 109.

CHAPTER 3 – Centralized Building Maintenance Program

Pursuant to the Denver City Charter § 2.9.4(D), the Manager of General Services has the responsibility for the management and control of the occupancy and of the operation, care, repair and maintenance of all structures or parts of structures owned or leased by the City of Denver and used for general municipal offices, and of all land upon which such structures are located and operated. Services may include all, or a portion of, building maintenance, repair, janitorial, minor remodeling, and inspection. The Facilities Management Division shall be the responsible agency for the maintenance management of all space in buildings assigned to it by this Executive Order. The Director of Facilities Management shall administer the Centralized Building Maintenance Program.

3.1 Duties and responsibilities:

- a. Establish and maintain a consistent set of maintenance standards for all City buildings.
- b. Perform periodic preventative maintenance for all electrical, plumbing, HVAC and carpentry systems throughout those City facilities listed in the Memorandum.
- c. Establish maintenance planning and control methods and simplify work order and maintenance management procedures.
- d. Establish scientific analysis procedure to effectively monitor and control preventative and routine maintenance practices.
- e. Perform all maintenance, repair and related services in a manner to meet legal requirements and established procedural standards.
- f. Simplify the reporting of routine and emergency maintenance problems.
- g. Establish maintenance planning and scheduling activities, inventory controls, supervisory and training requirements for all employees, who work with building maintenance activities.
- h. Collect and analyze cost and operational data associated with maintenance responsibilities in all City facilities. Calculate cost and operational data in an effort to effectively monitor and control building maintenance costs.
- i. Prepare a standard operating procedures manual for all City buildings.

Approved for Legality:



Kristin M. Bronson
City Attorney for the City and County
Of Denver

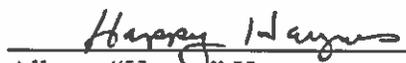
Approved:



Michael B. Hancock
MAYOR



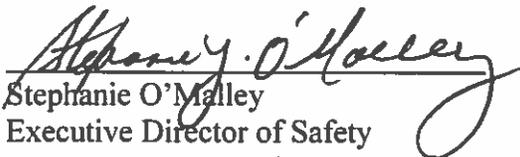
Jose Cornejo
Executive Director of Public Works



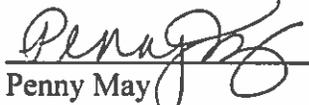
Allegra "Happy" Haynes
Executive Director of Parks & Recreation



Brendan Hanlon
Chief Financial Officer



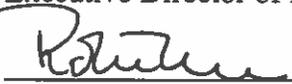
Stephanie O'Malley
Executive Director of Safety



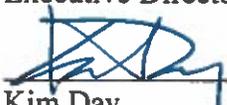
Penny May
Interim Executive Director of General
Services



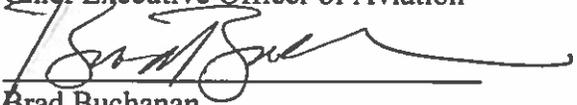
Don Mares
Executive Director of Human Services



Bob McDonald
Executive Director of Environmental Health



Kim Day
Chief Executive Officer of Aviation



Brad Buchanan
Executive Director of Community Planning
& Development

Memorandum No. 100A

TO: All Agencies Under the Mayor

FROM: Michael B. Hancock, Mayor

DATE: October 5, 2016

SUBJECT: CITY OWNED AND LEASED REAL ESTATE (Asset Management Policy for Leasing to Non-City Entities/Reporting Requirements)

This Memorandum shall be attached to and become a part of Executive Order No. 100 , titled CITY OWNED AND LEASED REAL ESTATE (Acquisition, Disposition, Leasing, Facility Management, Space Planning and Programming)

The purpose of this policy is to establish clear guidelines and reporting requirements for the leasing of City-owned property to non-City entities for a period of six months or longer. Excluded from this policy are leases at DIA, the leases of parking facilities that are administered by Parking Management, leases administered by Theaters and Arenas, and concession agreements and leases administered by Parks and Recreation.

In determining whether the City should lease a city-owned property to a non-city entity, the following considerations need to be addressed:

1. **The public purpose of the proposed lease.** Leases to non-City entities will occur only when there is a public purpose. All leases of city-owned property must identify the benefits the lease will provide to the City.
2. **Financial considerations for lessee.** Identify financial considerations, other than providing the leased space, if any, that the proposed lease agreement provides the lessee. Examples would include, but not be limited to, payments of utilities, provision of services at no cost, and similar items.
3. **City consideration.** Determine that this is in the best interest of the City, whether the benefit to City be monetary or non-monetary compensation. The analysis may include a determination as to other potential uses for the property and the current demand for either lease or sale of the property. The proposed lease must be compatible with other occupants in the building.
4. **Selection process.** Determine if it is appropriate to have a competitive selection process or lease to a specific party.
5. **Termination clause.** The City will include the right to terminate the contract at any time prior to its expiration at its sole discretion. Exceptions will be limited and must be justified; however, when a lessee invests significant capital in a City property, such lessee will usually be given a specific negotiated term for a lease.
6. **Reporting requirements.** Every beneficiary of a City lease who is paying nominal rent in exchange for providing the City with valuable non-monetary compensation will be required to submit an annual report that documents the performance accomplishments for the services and benefits that the entity committed to provide, within 60 days from the

end of each calendar year. This report must demonstrate the lessee's continued public purpose, as stated in consideration number 1 set forth above, and benefit to the city and its plans for the upcoming calendar year. This report should be limited to one or two pages. All such leases will contain a provision that allows the City to terminate the lease in the event the lessee fails to provide services to the City and community consistent with the lessee's stated purpose.

Agencies requesting that City-owned property be leased to a non-City entity will provide the information to address the six considerations listed above to the Division of Real Estate. The requesting agency will also submit a statement summarizing the proposed business terms of the contract that clearly identifies the direct (out of pocket) costs that the City will incur including maintenance and utilities.

The Director of Real Estate will decide whether to proceed with the requested lease agreement based on a review of the information and discussion with appropriate stakeholders. If approved, the Division of Real Estate will complete the lease contract process. In the ordinance request, the Division of Real Estate will provide City Council with the information that addresses the six considerations to justify a lease of City-owned property in accordance with this policy.

The agency sponsoring the lease will ensure that the annual reports are completed, when required, and shall submit a copy of the report to the Division of Real Estate. The Division of Real Estate will serve as the depository for all the reports and will make the reports available upon request.

Memorandum No. 100B

TO: All Agencies Under the Mayor

FROM: Michael B. Hancock, Mayor

DATE: October 5, 2016

SUBJECT: Clearance & Release Process for Disposition of City Owned Real Estate

Disposition of City owned real estate should occur only after property has been determined to be surplus to City needs through a Clearance and Release process outlined below. City needs and purposes include prioritization of affordable housing and community serving development opportunities where appropriate.

The Division of Real Estate shall be responsible for working with City agencies to determine if a subject property:

- Is necessary for the provision of essential government services
- Is in a state where ongoing facility conditions or maintenance needs make the property cost prohibitive to remain in the portfolio
- Meets an identified future need
- Is suitable for affordable housing purposes

When proposing sale of City owned property, the Division of Real Estate shall submit Clearance and Release forms to agencies as necessary, but not less than:

- Manager of Community Planning and Development for evaluation of appropriate uses and context based on adopted city/neighborhood plans
- Manager of Public Works for evaluation of any current or identified future right of way, access, easement, utility, wastewater, or transportation needs
- Manager of Parks and Recreation for evaluation of any current or identified future parks, recreation, open space or trails needs
- Director of the Office of Economic Development for evaluation of economic conditions, business environment, retail and employment needs
- Director of Housing for evaluation of affordable housing needs and suitability for provision of affordable housing units

Clearance and Release forms must be returned within 15 calendar days with written explanation of approval, disapproval or conditions. Feedback or conditions from agencies for approval of disposition of real estate shall be used as a basis for criteria in any future RFP for the subject property. Any single agency shall be considered to have a right of first refusal on property for identified city needs, including affordable housing.

Suitability for affordable housing opportunities shall be evaluated based on the following considerations:

- Conformance with zoning/adopted city plans and identified neighborhood needs
- Ability to leverage other funds for development
- Expected level of subsidy needed to develop affordable housing on site
- Availability of funds to support project
- Number and type of units likely to be produced on site

At a site level, analysis will include:

- Current zoning and building form requirements
- Surrounding land uses
- Availability of utilities
- Parcel size
- Land cost/actual value
- Proximity to transit ($\frac{1}{2}$ mile from fixed rail and $\frac{1}{4}$ mile from high frequency bus)
- Neighborhood Indicators (*as finalized with HUD's Affirmatively Furthering Fair Housing rule*) – including proximity to jobs, high quality schools, and existing affordable properties

Subject property will also be reviewed with an Executive team that includes members of the Mayor's staff prior to final determination as saleable surplus property.