

RESOLUTION NO. 16/15-16

**A RESOLUTION OF THE OHLONE COMMUNITY COLLEGE DISTRICT  
AUTHORIZING THE FILING OF A REQUEST TO WAIVE CERTAIN PROVISIONS OF  
THE CALIFORNIA EDUCATION CODE GOVERNING THE PUBLIC BIDDING  
PROCEDURES FOR GROUND LEASE OF SURPLUS FRONTAGE PROPERTY  
LOCATED AT 43600 MISSION BOULEVARD, FREMONT, CALIFORNIA**

WHEREAS, the Ohlone Community College District (“District”) is the owner of surplus District frontage property consisting of an assemblage of three District sites totaling approximately 15 acres located along Mission Boulevard, Fremont, CA with the common street address 43600 Mission Boulevard, Fremont, CA (the “Property”) and depicted in Attachment 1 as Private Development A, Private Development B-1 and Private Development B-2; and

WHEREAS, by prior resolution of the Board of Trustees (“Board”) No. 20/13-14 adopted on February 12, 2014, the Board authorized the ground lease of the Property (the “Lease Resolution”) pursuant to the public bidding procedures in California Education Code §§ 81360 *et seq.* (the “Education Code”); and

WHEREAS, the Board did not receive any acceptable proposals meeting the minimum lease requirements specified in the Lease Resolution for the ground lease of all or a portion of the Property; and

WHEREAS, the public bidding requirements in the Education Code may be waived by the Board of Governors of the California Community Colleges (the “Board of Governors”) upon written request by the Board after providing 30-days’ written notice of a public hearing and making findings that the waiver request is in the best interest of the District and will not increase state costs or decrease state revenues; and

WHEREAS, the Board believes it is in the best interest of the District to request a waiver of the Education Code as set forth in Attachment 2 to avoid a likely second unsuccessful bid process to ground lease the Property under the Education Code; and

WHEREAS, the waiver request will allow the District to retain the services of a real estate brokerage firm to market the Property and directly negotiate with the developer entity the Board determines best suited to develop the Property and maximize the potential income the District will receive from the ground lease of the Property;

NOW, THEREFORE, be it resolved by the Board as follows:

**Section 1.**     Recitals. The Board hereby finds and determines that all the above recitals are true and correct.

**Section 2.**     Notice of Public Hearing. This resolution is adopted following a public hearing at a regularly scheduled meeting of the Board for which a minimum of thirty (30) days public notice has been duly given.

**Section 3.**     Best Interest Findings. The Board finds it is in the best interest of the District to directly negotiate with the developer entity the Board determines best suited to develop the Property in order to maximize the potential income the District will receive from the ground lease of the Property and avoid a likely second unsuccessful bid process to ground lease the Property under

the Education Code. The Board further finds the potential income from the ground lease of the Property will further the ability of the District to meet the educational needs of the community. The Board further finds a waiver of the Education Code to allow the Board to directly negotiate a ground lease of the Property will not increase state costs or decrease state revenues.

**Section 4.** Authorization to Submit Waiver Request. The Board authorizes the President, or her designated representative, to file a waiver request with the Board of Governors to waive certain of the provisions in the Education Code substantially in the form of Attachment 2, attached hereto and incorporated herein by this reference. The specific purpose and reason for waiver of each of the applicable Education Code sections are also set forth in Attachment 2.

**Section 5.** Effect. This Resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED by the Governing Board of the Ohlone Community College District by the vote of its members on the thirteenth day of January 2016 as follows:

AYES: Bonaccorsi, Cox, Giovannini-Hill, Shah, Yee, Larsen, Watters

NOES: ∅

ABSTAIN: ∅

ABSENT: ∅

I, Gari Browning, Secretary of the Board of Trustees of the Ohlone Community College District, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Trustees at a regular meeting thereof held at its regular place of meeting at the time and by the vote stated above, which resolution is on file in the office of the Board of Trustees.



Gari Browning, Secretary  
Board of Trustees  
Ohlone Community College District



ATTACHMENT 2

Ohlone College Excess Land  
43600 Mission Blvd.  
Fremont, Alameda County, California

(Education Code Provisions to be Waived and Statement of Purpose)

Education Code Section 81365. *Before ordering the sale or lease of any property the governing board, in a regular open meeting, by two-thirds vote of all its members, shall adopt a resolution, declaring its intention to sell or lease the property, as the case may be. The resolution shall describe the property proposed to be sold or leased in such manner as to identify it. ~~and shall specify the minimum price or rental and the terms upon which it will be sold or leased and the commission or rate thereof, if any, which the board will pay to a licensed real estate broker out of the minimum price or rental. The resolution shall fix a time not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to purchase or lease will be received and considered.~~*

If the Board is unsuccessful in leasing the Property under the Lease Resolution, which requires public bidding and minimum lease terms, waiver of this portion of Section 81365 would allow the Board to avoid specifying a minimum bid at a public meeting and would allow the Board to set their own terms and conditions and remove references to minimum bids and actions to be taken with “sealed” bids. The Board may instead work with a real estate investment broker to develop a strategic plan for advertising and marketing of the Property in order to solicit proposals from potential developers interested in ground leasing the Property.

Education Code Section 81370.

*(a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals that have been received shall, in public session, be ~~opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted that conform to all terms and conditions specified in the resolution of intention to sell or to lease and that are made by responsible bidders, the sealed proposal that is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless the board rejects all of these bid~~ [ADD: The governing body may accept the proposal that the governing body determines is in the best interest of the District.]*

*(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district.*

This waiver will allow the Board the greatest flexibility in evaluating proposals. The Board will be able to consider the improvements to the Property developers intend to make to the Property. The Board will have flexibility to consider such improvements in evaluating and awarding proposals.

Education Code Section 81374. *The final acceptance by the governing body may be made ~~either at the same session or at any adjourned session of the same meeting held within the 10 days~~ 30 days next following.*

The Board sets its meeting calendar at the start of each calendar year. This modification would allow the Board to adjourn to the next regularly scheduled meeting rather than a special meeting. Public participation is likely to increase if the adjourned meeting is held at a regularly scheduled meeting.