





The Board of Governors of the California Community Colleges

PRESENTED TO THE BOARD OF GOVERNORS

DATE: July 18, 2016

SUBJECT: Request for Waiver of Property Use Requirements: Sale, Lease, Use, Gift and Exchange		Item Number: 2.7	
		Attachment: Yes	
CATEGORY:	College Finance and Facilities Planning	TYPE OF BOARD CONSIDERATION:	
Recommended By:	 Mario Rodriguez, Acting Vice Chancellor	Consent/Routine	
		First Reading	
Approved for Consideration:	 Erik Skinner, Interim Chancellor	Action	X
		Information	

ISSUE: This item requests approval for the waiver of certain property use requirements identified in Education Code sections 81365, 81370 and 81374 as requested by the Ohlone Community College District (“District”). District requests that the Board of Governors approve the waiver consistent with the authority granted by Education Code sections 81250 and 81252 to allow for the negotiated lease of District property.

BACKGROUND: Ohlone Community College District desires to enter into a long-term ground lease agreement for its frontage property located at 43600 Mission Boulevard, Fremont, California 94539 (“Property”). On February 12, 2014, the District’s Board of Trustees declared the Property surplus and authorized the District to lease the property. In April of 2014, the District attempted to lease the Property per the provisions of Education Code sections 81360 *et seq.*, including public notice and bidding procedure. The District did not receive any acceptable proposals meeting the minimum lease requirements specified in the District’s Board Lease Resolution for the ground lease of the Property. The District determined that it was highly unlikely a second request for proposal under the Education Code sections 81360 *et seq.* would be successful. The District’s Board of Trustees believes a successful ground lease of the Property will require an aggressive marketing effort leading to extensive negotiations with potential lessees/developers of the Property. **(Background cont.)**

RECOMMENDATION: It is recommended that the Board of Governors approve Ohlone Community College District’s request for a waiver of certain parts of the Education Code sections 81365, 81370 and 81374 for the purpose of leasing the Property shown as strikethrough in Attachment B.

(Background cont.)

The District desires to develop the Property to its highest and best use pursuant to a negotiated ground lease. The District believes that a negotiated ground lease will allow the District the flexibility in selecting the best fit for the development of the Property and to maximize the revenue from the ground lease. The waiver will allow the District to negotiate directly with the entity determined by the District's Board of Trustees to be best suited for the development of the Property rather than go through the time and expense of a second, and potentially unsuccessful, bid process.

ANALYSIS:

WAIVER REQUEST

The Ohlone Community College District is requesting a waiver of certain parts of the Education Code sections 81365, 81370 and 81374 shown as strikethrough in Attachment B to allow the District to pursue a negotiated ground lease, so the district may lease approximately 15 acres of frontage Property to create a long-term income stream.

In February of 2014, the Ohlone Community College District's Board of Trustees declared the Property surplus and authorized the district, by way of Resolution No. 20/13-14, to proceed with the bid process set forth under Education Code sections 81360 *et seq.* to lease the property. After the District adopted a resolution declaring its intention to lease the Property, a bid package was disseminated setting forth the minimum terms and soliciting bids from interested parties to develop the property as a mixed-use commercial/residential development consistent with the permitted zoning of the Property. A public bid hearing was held on April 9, 2014. The District did not receive any acceptable bid proposals meeting the minimum lease requirements specified in the lease resolution for the ground lease of the Property.

The District states that repeating the competitive bidding process set forth in the Education Code would not be effective given the district's experience and after consultation with the District's real estate advisors. These experiences indicate that a successful ground lease of the Property will require an aggressive marketing effort leading to extensive negotiations with potential commercial property lessees/developers of the Property. Further, the District will receive a better economic return on the Property by using a negotiated lease agreement that can take into consideration necessary land use approvals from local government agencies. The District requires flexibility in selecting the best fit for the development of the Property as well as to maximize the revenue from the ground lease. The District would benefit from the potential ongoing cash flow that could be generated by a carefully negotiated ground lease.

The District requests a waiver of certain parts of Section 81365, which would allow the District to avoid specifying a minimum bid at a public meeting and would allow the District to set their own terms and conditions and remove references to minimum bids and actions to be taken with "sealed" bids. The District would instead work with a broker to develop a strategic plan for advertising and marketing of the Property in order to solicit proposals from potential developer/ground lessees interested in the Property.

The District requests a waiver of certain parts of Section 81370, which would allow the District the greatest flexibility in evaluating proposals. At some point in the future, the District may decide to take possession of the Property for educational or administrative purposes. The requested waiver would provide the Board with the flexibility to consider potential ground lessees' proposed improvements to the Property and suitability for future District use of such improvements.

The District requests a waiver of Section 81374. 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 more likely if the adjourned meeting is held at a regularly scheduled meeting.

BOARD OF GOVERNORS' WAIVER AUTHORITY

Education Code Section 81250 allows the governing board of a community college district to request a waiver of all or part of any section of the California Education Code, Division 7, Part 49, Chapter 2. Education Code sections 81365, 81370 and 81374 are included in Chapter 2 of the Education Code.

Education Code section 81252 allows the Board of Governors of the California Community Colleges to approve any waiver upon finding that a public hearing has been held and that the action would promote efficiency and further the public benefit. Additionally, Education Code section 81252(b) requires the District seeking the waiver to demonstrate all of the following:

- (1) The District has provided written notice to certain public entities at least 30 days prior to holding a public hearing on the waiver request.
- (2) The District, after making a good faith effort, was unable to reach agreement with any public agency that sought to acquire the site pursuant to Education Code section 81363.5.
- (3) The waiver will not substantially increase state costs or decrease state revenues.
- (4) The waiver will further the ability of the District to meet the educational needs of the community.

Consistent with the requirements of Education Code section 81252(b):

- The District conducted a public hearing regarding its intent to request a waiver of Education Code sections 81360 *et seq.* on January 13, 2016.
- The District provided written notice to the appropriate public entities 30 days before the hearing per section 81250(b).
- No public agency made an effort to acquire the site pursuant to Education Code section 81363.
- The District did attempt to lease the property without a waiver per the provisions of Education Code section 81360 *et seq.* and was unsuccessful.
- A waiver will not increase state costs or decrease state revenues.
- A waiver will further the ability of the District to meet the educational needs of the community by providing the District with needed additional funds.

*Staff: Eric Thorson, Facilities Planning and Utilization Specialist
College Finance and Facilities Planning*