

RESOLUTION NO. 17/21 -22

**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 LEASE OF SURPLUS PROPERTY AT THE NEWARK CAMPUS**

WHEREAS, the Ohlone Community College District (“District”) is the owner of approximately 15.9 acres of vacant surplus real property on the south/southwest side of the Ohlone College Newark Center for Health Sciences and Technology located on Cherry Street between Mowry Avenue and Stevenson Boulevard in the City of Newark, County of Alameda, State of California and is a portion of APN 901-0185-13-9 (“Property”); and

WHEREAS, by prior resolution of the Board of Trustees (“Board”) No. 03/21-22 adopted on August 11, 2021, the Board declared the Property surplus and declared its intent to lease the Property for a market-rate multi-family residential project that will benefit the District by providing ongoing cash flow that will help the District meet the educational needs of the community; and

WHEREAS, prior to declaring the Property surplus, on October 14, 2020 the Board, after consultation with its real estate development broker, adopted Resolution No. 10/20-21 authorizing the ground lease of the Property for an office, research & development, advanced manufacturing project; and the Board did not receive any proposals for the ground lease of the Property; and

WHEREAS, the Property is currently zoned Public Facilities District (P-F) and development of a multi-family residential housing project will require a developer to obtain land use entitlements that include a General Plan amendment and zoning change from Public Facilities District to Planned Development-Multi-Family; and

WHEREAS, the Property is also subject to a land use covenant imposed by the California Department of Toxic Substances that requires mitigation of environmental conditions prior to residential development; and

WHEREAS, after consulting with District’s real estate development broker, the Board believes a successful ground lease of the Property for a multi-family residential project will require an aggressive marketing effort leading to extensive negotiations with potential lessees/developers of the Property to create a “best value” proposal that meets the District goals for rental income, affordable housing units, mitigation of environmental conditions and substantial completion; and

WHEREAS, the Board believes that processing the waiver of the parts of Part 49, Chapter 2 as provided in Attachment A will best allow the District to ground lease all or a portion of the Property and achieve the higher end of the ground lease value of the Property through targeted direct broker marketing and developer negotiations prior to award of the ground lease; 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 set November 10, 2021 as the date of the public hearing to consider the waiver request and 30-days' written notice of the public notice was given on September 29, 2021 by regular mail and by publication in a newspaper of general circulation (the Argus) on October 1 and 8, 2021; 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 A 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 the President's 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 A 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 A.

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 tenth day of November, 2021 as follows:

AYES:

NOES:

ABSTAIN:

ABSENT:

I, Eric Bishop, Ed.D., 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.

Eric Bishop, Ed.D., Secretary
Board of Trustees
Ohlone Community College District

ATTACHMENT A

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

1102 Q STREET
SACRAMENTO, CA 95811-6549
(916) 445-8752
HTTP://WWW.CCCCO.EDU



**Request for Waiver of Property Use Requirements:
Sale, Lease, Use, Gift, and Exchange (Ed. Code § 81250 et seq.)**

Community College District:	Contact's name and title:	Email:		
Ohlone Community College District	Sean B. Absher	sabsher@stradlinglaw.com		
Address:	City:	State:	Zip:	Phone:
44 Montgomery Street, #4200	San Francisco	CA	94104	(415) 283-2242
Date of request:	Local board approval date: (Required)			
November 11, 2021	November 10, 2021			

Justification

Date of public hearing held on this matter: November 10, 2021.

What parts of Part 49, Chapter 2 are being requested to be waived? (See Attached Exhibit A) Why? (See Attached Exhibit A).

On August 11, 2021 by Resolution No. 03/21-22, the Ohlone Community College District (District) Board of Trustees (Board) identified and declared as surplus real property consisting of approximately 15.9 acres of vacant land in Newark, California (Property). The Property is located on the south/southwest side of the District's Newark Campus Health Sciences & Technology Center on Cherry Street between Mowry Avenue and Stevenson Blvd. The Board desires to enter into a long term ground lease of the Property for a multi-family residential housing project that will benefit the District by providing ongoing cash flow that will help the District meet the educational needs of the community.

Prior to declaring the Property surplus, on October 14, 2020 the Board, after consultation with its real estate development broker, adopted Resolution No. 10/20-21 authorizing the ground lease of the Property for an office, research & development, advanced manufacturing project. Further to Education Code sections 81390 *et seq.*, the proposed project required a joint occupancy component whereby the District would have the use of a portion of the project. The Board did not receive any proposals for the ground lease of the Property. Thereafter, the Board has been informed by its real estate development broker that staff in the City of Newark Community Development Department believes a better and more compatible use of the Property is declaring the Property surplus and developing a multi-family residential project with a set aside for affordable housing units.

**Request for Waiver of Property Use Requirements: Sale, Lease, Use,
Gift, and Exchange (Ed. Code § 81250)
California Community Colleges Chancellor’s Office**

The Property is currently zoned Public Facilities District (P-F) and development of a multi-family residential housing project will require a developer to obtain land use entitlements that include a General Plan amendment and zoning change from Public Facilities District to Planned Development-Multi-Family. The Property is also subject to a land use covenant imposed by the California Department of Toxic Substances that requires mitigation of environmental conditions prior to residential development.

After consulting with District’s real estate development broker, the Board believes a successful ground lease of the Property for a multi-family residential project will require an aggressive marketing effort leading to extensive negotiations with potential lessees/developers of the Property to create a “best value” proposal that meets the District goals for rental income, affordable housing units, mitigation of environmental conditions and substantial completion. The Board believes that processing the waiver of the parts of Part 49, Chapter 2 as provided in Exhibit A will best allow the District to ground lease all or a portion of the Property and achieve the higher end of the ground lease value of the Property through targeted direct broker marketing and developer negotiations prior to award of the ground lease.

Does waiver request involve the sale or lease of district real property? This waiver involves the lease of District property without option to purchase.

If so, was written notice of at least 30 days prior to the public hearing provided to the appropriate entity outlined in § 81250(b)? Yes, public notice was given on September 29, 2021. As a courtesy, notice was also given to the general public by publication in a newspaper of general circulation with the boundary of the District on October 1 and 8, 2021.

District Certification – *I hereby certify that the information provided on this application is correct and complete.*

Authorized Signature:	Name and Title: Sean B. Absher Attorney for Ohlone CCD	Date: November 11, 2021
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FOR California Community College Chancellor’s Office USE ONLY

Staff Member Name:	Signature:	Date:
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Please note that additional pages can be attached, if needed.

Send original plus one copy to:

California Community Colleges
Chancellor’s Office
1102 Q Street
Sacramento, CA 95811-6549
ATTN: Legal Affairs

Or

Email the completed form and back-up material to: legalaffairs@cccco.edu

Exhibit A

(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.~~ [ADD: The governing body shall specify “best value” criteria to evaluate rental and terms that are in the best interest of the District.]*

Waiver of this portion of Section 81365 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 may 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 that meets the District’s goals for rental income, affordable housing units, and environmental mitigation and project scheduling and substantial completion.

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 District the greatest flexibility in developing “best value” criteria for proposals based on proposed rental income, affordable housing units, environmental mitigation and substantial completion date(s). The District may 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 that meets the District’s goals for rental income, affordable housing units, and environmental mitigation and project scheduling and substantial completion.

**Request for Waiver of Property Use Requirements: Sale, Lease, Use,
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* In addition, the District at some point in the future may decide to take possession of the Property for educational or administrative purposes. The Board will have flexibility to consider proposed ground lessees' contemplated improvements to the Property and suitability for future District use of such improvements.

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 more likely if the adjourned meeting is held at a regularly scheduled meeting.