

# The Public Agency Property Lease

## Guidelines to Insure Appropriate Use of Valuable Public Owned Real Estate Assets

by Jean M. Diaz, SR/WA

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***As real estate becomes more scarce and costly, local public agencies can expect more demand for use of publicly-owned real estate assets.***

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It is recommended that all public agencies adopt and maintain a policy governing the leased use of its valuable real estate assets by others. This article discusses the importance of such a policy, the components of such a policy and the experience of the City of Palo Alto, California in developing such a policy.

### **Why Develop A Policy For Leased Use of Agency-Owned Real Estate Assets By Others?**

Real estate comprises a very valuable asset of any public agency. In many parts of the country real estate is an extremely scarce commodity commanding significant values. For example, in the City of Palo Alto, California, a medium size suburban city located between San Francisco and San Jose, commercial land values in excess of \$75.00/square foot and residential land sales in excess of \$100,000/unit raw land cost have not been uncommon.

Many public agencies also have a tradition of supporting public purposes through leases of agency real estate. For example, the City of Palo Alto leases or has leased space to the Boy Scouts of America, the Girl Scouts of America, the American Red Cross, the Senior Coordinating Council and numerous other

community or publicly oriented groups. There also exist leases for historic preservation (The Veteran's Memorial Building; now a restaurant as well as Veteran's Council meeting space) and leases for economic development (a Holiday Inn located on the City's former service yard for example).

As real estate becomes more scarce and costly; and as state and federal subsidy programs are cut-back or phased-out as they are currently, local public agencies can expect more and more demand for use of publicly-owned real estate assets. Without a clear policy regarding leased-use of agency-owned real estate assets adopted by the agency's legislative body, agency staff and political leaders will experience difficulty in applying consistent criteria and guidelines for such use by an increasingly diverse group of potential users.

Therefore, a policy regarding leased-use of agency-owned real estate assets is important since:

- Agency-owned real estate assets are valuable;
- Leased use of agency-owned real estate assets can be an effective way of satisfying public needs;
- Requests for use of publicly-owned property can be expected to increase as the value of real

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estate increases and as state and federal support to various programs requiring real estate decreases; and

- Lack of such a policy will make it difficult for agency staff and political leaders to deal with a diverse group of potential users on a consistent and rational basis.

### **Development of a Policy for Leased-Use of Land and Facilities owned by the City of Palo Alto**

During the summer of 1981, a group called the Friends of The Winterclub began meeting with city staff and councilmembers to pursue the idea of leasing land within a yet to be developed city-owned park for the purpose of constructing an ice-skating rink. The Winterclub, a privately operated skating rink was about to lose its lease and the operator is preparing to retire. The Friends of The Winterclub, believing a multi-purpose skating-rink to be of significant public benefit, asked for use of city property to preserve this recreational opportunity in the city. Realizing that real estate in Palo Alto is very valuable and realizing that the Council had over the years entered into a variety of leases with no policy to guide them which re-



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sulted in leases with widely varying terms and conditions, staff recommended that the City Council adopt a policy regarding leased-use of city-owned land and facilities prior to acting on any more requests for such use. The City Council agreed and referred the development of such a policy to the staff and the Council's Policy and Procedures Committee.

In November, 1981 the proposed Policy Regarding Leased Use of City Land/Facilities, which had been developed by staff and the Policy & Procedures Committee, was forwarded to the full City Council. The City Council indicated that this policy should help resolve potential problems and provide guidance for staff and the Council in making decisions affecting leased-use of city property. The policy was unanimously adopted by the City Council on November 23, 1981.

**Contents of the Policy  
Regarding Leased Use of  
Agency-Owned Real Estate  
Assets**

The Policy Regarding Leased Use of City Land/Facilities adopted by the City of Palo Alto is available from the author. The City of Palo Alto policy provides an outline of the contents of such a policy that should be applicable for any public agency. A copy of the policy may be received by contacting the author. The highlights of the policy are discussed in the following paragraphs.

**Policy Statement:** The policy statement is a general summary of the policy indicating that:

- Leased use of City-owned land or facilities is appropriate only when such use will further public use or provides a public benefit;
- Such use must be consistent with city policies, plans and procedures; and
- Open competitive processes shall be used to solicit proposals or provide open opportunities prior

to award of an Option to Lease or Lease.

**Criteria For Leased Use:** The criteria set forth the factors to be considered when evaluating a proposal to use city land or facilities. Generally these criteria should include:

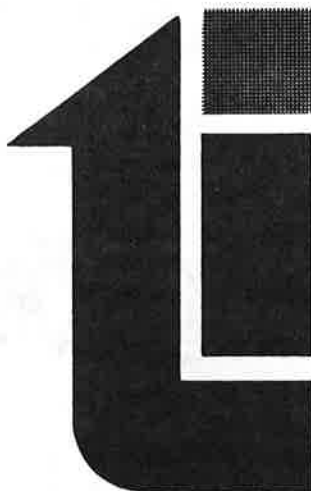
- Consistency of proposed use with City ownership;
- Use of an Option to Lease whenever there are significant pre-operational requirements such as construction, financing, fund raising, etc.;
- Required information to be included in any proposal for leased use, e.g. public need, consistency of use, impact of proposed use, proposed degree of public access, proposed fee structure, proposed economics of the operation (income, expenses, consideration to City, etc.), qualifications of proposer, etc.;
- Process for open/competitive opportunities to insure maximum public access to the leasing opportunity and to provide ade-

*(see Lease, pg. 11)*

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Fig. 4: This deterrent can be stepped over by an adult or easily climbed over by a child or teen-ager. Clearly an invitation to violation.

A recent case in the southeastern United States clearly demonstrates the gravity of the problem. A pipe crossing had been in place for many years. Pedestrian deterrents were attached at both ends of the pipe, and no accident had ever been reported at this location during the life of the crossing. Somehow, a child managed to get past the deterrent, fell from the pipe into the canal below, and drowned. A suit for damages against the Utility Company, alleging negligence on the part of the Company, was filed.

During the preparation of the Company's defense of the suit, a strenuous effort was mounted to attempt to demonstrate the adequacy of the design of the pedestrian deterrent. The subsequent investigation revealed that there was no standard accepted design for such a pedestrian deterrent anywhere in the United States. None of the agencies issuing overhead crossing permits were found to require the placement of such deterrents. Instead, the responsibility for the design and placement of such deterrents has been left to the individual permittees. Obviously, the Company's position in the litigation would have been significantly enhanced if the pedestrian deterrent on the overcrossing where the accident occurred had been of an accepted "standard" design.

There is an alternative to the design and installation of adequate pedestrian deterrents — and that is to construct the overcrossing as a

legitimate bridge. This, however, entails additional responsibilities on the part of the Owner — namely the construction and maintenance of the bridge in a manner that will keep it safe at all times. Any deterioration of the rails and/or bridge floor that results in injuries to the users of the bridge will surely result in liability and litigation. Obviously, the safer course of action is the development of an impassable pedestrian barrier.

Figures 5, 6, and 7 below show one form of pedestrian deterrent which has been developed by a utility company faced with the problem of guarding numerous canal and highway crossings in its service area.



Fig. 5: Crossing guard in place.

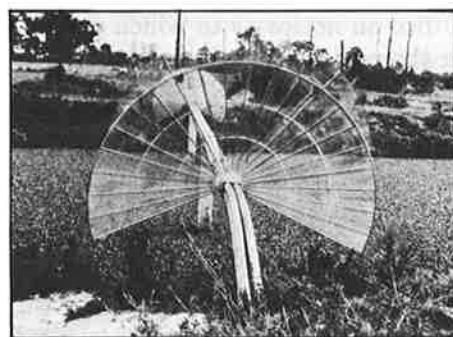


Fig. 6: End view of crossing guard - an obvious invitation to stay off the utility crossing.

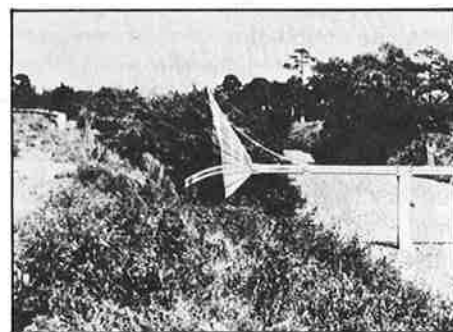


Fig. 7: Side view of crossing guard showing how access to the crossing could only be gained by extreme agility or the use of ladders.

The crossing guard shown in these photos is deemed by the author to

fulfill all of the design criteria mentioned earlier. It has been used for some time by one of our member companies with great success.

Members of the International Utilities Committee have assembled an extensive library of information relating to this subject. Members of the Committee stand ready to assist any Chapter or utility company which is interested in addressing its responsibilities in this important and sensitive area.

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## Lease *(cont. from pg. 9)*

quate public notice to the community of the proposed leased-use of public property;

- Indication that fair market rental is the baseline for determining consideration to the public agency. Deductions will be considered only for clearly articulated public benefits;
- Criteria for establishing the maximum term of the lease including the minimum time necessary to amortize the tenant improvements and the nature of the proposed operation.

On November 23, 1981, the City Council awarded a 30-month Option to Lease to the Friends of Winterclub. This was the first request for leased-use of city-owned property processed under the newly adopted policy. Staff analysis and recommendations regarding this specific request followed the draft policy accepted by the Finance and Public Works Committee as a convenient way to test the proposed policy. The success of processing this test case was a factor in the strong City Council acceptance of the Policy.