



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
DECEMBER 21, 2011**

TO: Mayor and City Council

FROM: Philip Vince, City Manager

SUBJECT: Consideration of the Property Disposition Process for 610 and 630 Court Street, Receiving the City Manager’s Report and Making Findings, Setting the Public Hearing Date for Authorizing the Addition of the Property Located at 610 Court Street to the City’s Inventory of Real Property and the Final Disposition of 610 and 630 Court Street, and Authorizing the Preparation of the Notice of Potential Disposition as set forth in MMC Section 12.40.060

DATE: December 14, 2011

RECOMMENDATION:

Adopt resolution: 1) receiving the City Manager’s report pursuant to MMC Section 12.40.040 preliminarily determining that disposition of the properties at 610 and 630 Court Street is for the common benefit of the citizens of Martinez, required by the public interest and convenience and in compliance with applicable law and authorize the City Manager to commence the process of disposition of the properties at 610 and 630 Court Street by negotiated sale to Southport Land Company; 2) setting the public hearing date authorizing the addition of the property located at 610 Court Street to the City’s Inventory of Real Property and declaring the same to be in excess of the City’s foreseeable needs and for the final disposition of the property at 610 and 630 Court Street and authorizing the preparation of the Notice of Potential Disposition as set forth in MMC Section 12.40.060.

BACKGROUND:

610 Court Street is currently owned by Contra Costa County, who has agreed to surplus the 6800 square foot two story building and sell it to the City of Martinez. The initial notice to sell the property was approved on consent by the Board of Supervisors at the December 13, 2011 Board meeting. The actual disposition of the property sale transaction is scheduled for the January 10, 2012 Board of Supervisors meeting.

While the City of Martinez gets first right of refusal as a municipal agency, in the present transaction it is the City’s intent to act as an intermediary in a pass through capacity.

As the Council is aware, the City began the property disposition process relating to 630 Court Street, the City owned building immediately adjacent to 610 Court Street in February of 2008. The 630 Court Street Building was added to the City’s inventory, declared to be in excess of the City’s foreseeable needs and the Council approved a process to directly negotiate the sale of that property at that time. The Council subsequently approved a purchase and sale agreement with Goldenberg et.al. The final sale to Goldenberg was never effectuated and after expiration of the term of the Purchase and Sale Agreement with Goldenberg, the property at 630 Court Street

remained available for purchase. Southport Land Company expressed interest in purchasing 630 Court Street, and the City entered into an exclusive negotiating agreement (ENRA) relating thereto. Southport has been using the time pursuant to the ENRA to perform due diligence relating to the 630 Court Street property. After further review and preliminary design the developer has concluded that purchasing the adjacent 610 Court Street building is essential for completing the vision for developing a restaurant, bakery, and a large meeting space on the ground floor of 630 Court Street.

In an effort to facilitate such a transaction, City staff contacted the County to determine the progress that the County had made and to attempt to renew efforts for the County to surplus the property located at 610 Court Street.

In 2005 the City Council adopted Ordinance 1321 establishing a policy for the disposition of real property owned by the City. The Ordinance requires the preparation of an inventory of real property owned by the City. The inventory must also identify which City owned property is deemed to be in excess of the City's foreseeable needs and therefore surplus. Although the property at 630 Court Street was added to the inventory of real property and declared to be in excess of the City's foreseeable needs in 2008 and disposition authorized relating thereto, the property at 610 Court Street has yet to be added to the inventory.

The property at 610 Court should now be added to the list in compliance with Ordinance 1321 as we prepare to finalize this complex property transaction. Given this lengthy and multiple step disposition process, city staff is requesting that the City Council begin the formal disposition process while final negotiations are being completed. The following are the steps that must be followed in the City's formal property disposition process. Approximate dates for accomplishing each step are also shown.

- Step 1--(December 14, 2011) Planning Commission determination that the acquisition and disposition of 610 Court Street are consistent with the City's General Plan.
- Step 2--(December 21, 2011) Receive City Manager's report pursuant to MMC Section 12.40.040 and adopt a resolution preliminarily determining that disposition of said properties is for the common benefit of the citizens of Martinez, required by the public interest and convenience and in compliance with applicable law and authorize the City Manager to commence the process of disposition of the properties at 610 and 630 Court Street by negotiated sale to Southport Land Company. Set the public hearing date to authorize the addition of the property at 610 Court Street to the City's Real Property Inventory contingent upon its purchase by the City in accordance with Martinez Municipal Code (MMC) Section 12.40.010 and for the final disposition of 610 and 630 Court Street and authorize the City Clerk to prepare and post the Notice of Potential Disposal of Public Property pursuant to MMC Section 12.40.060 combined with the notice required by MMC Section 12.40.030 allowing a 30 day notice period. The notice will be placed in the local paper, posted at City Hall, and mailed to property owners within 300 feet of the property.
- Step 3--(February 1, 2012) Hold Public Hearing the addition of the property at 610 Court Street to the City's Real Property Inventory contingent upon its purchase by the City in accordance with Martinez Municipal Code (MMC) Section 12.40.010, and declare the property to be surplus and in excess of the City's foreseeable needs and for the final disposition of 610 and 630 Court Street.

- Step 4--(February 15, 2012) Consider approval of the purchase and sale agreement for 610 and 630 Court Street.

Pursuant to Section 12.40.040D of the Martinez Municipal Code, the City Council must, prior to any action to dispose of real property, consider a report requesting authorization to begin the disposition process. This staff report requests said authorization and identifies the information necessary for the Council to make that determination pursuant to Section 12.40.040 C. The Council is, based thereon being asked to preliminarily determine that the disposition of 610 Court Street is for the common benefit of the citizens of Martinez as the proposed renovation and tenancing of this landmark building will return a publically-owned building to the property tax rolls with proposed retail uses that will generate sales tax revenue. This project will also serve as an economic development and revitalization catalyst to encourage other projects in the downtown.

Furthermore, and as was stated above, the property at 630 Court Street and the property proposed to be purchased at 610 Court Street were/are to be purchased from Contra Costa County for the sole purpose of finding a developer who would improve the buildings and bring additional retail and/or offices uses consistent with the City downtown revitalization goal and the current General Plan, Downtown Specific Plan and zoning for the properties. The disposition proposal is consistent with applicable law, including, but not limited to the City's adopted Downtown Specific Plan.

Finally, City staff recommends that the Council preliminarily determine that the property shall be disposed of thru a negotiated sale process. Therefore, staff recommends that the City Council adopt the attached resolution setting forth the necessary findings to begin the disposition process and setting a public hearing.

As shown above it will take at least 45 days to complete the City's property disposition process and the negotiation of a purchase and sale agreement.

FISCAL IMPACT:

Fiscal costs consist of staff time and paying for nominal noticing costs.

ACTION:

Motion adopting a resolution: 1) receiving the City Manager's report pursuant to MMC Section 12.40.040 preliminarily determining that disposition of the properties at 610 and 630 Court Street is for the common benefit of the citizens of Martinez, required by the public interest and convenience and in compliance with applicable law, and authorize the City Manager to commence the process of disposition of the properties at 610 and 630 Court Street by negotiated sale to Southport Land Company; and 2) setting the public hearing date authorizing the addition of the property located at 610 Court Street to the City's Inventory of Real Property and declaring the same to be in excess of the City's foreseeable needs and for the final disposition of the property at 610 and 630 Court Street and authorizing the preparation of the Notice of Potential Disposition as set forth in MMC Section 12.40.060.

Attachments: Proposed Resolution
MMC Chapter 12.40

TO: Mayor and City Council

FROM: Philip Vince, City Manager

SUBJECT: Council Action to Consider Proceeding to Dispose of Real Property

DATE: December 16, 2011

The City Manager is asking the Council to provide him authorization to initiate the process for disposing of property located at 610 Court Street in Martinez. This building became vacant when the County Public Defender left a few years ago. Staff notified County General Services two years ago that it was interested in purchasing the property located at 610 Court Street and expressed interest in attracting a private developer to acquire and improve this property for commercial and office purposes. The City appraised the property at 610 Court Street based on comparable properties that have sold in the downtown area. The County Board of Supervisors approved disposing this surplus property by consent at their meeting on December 13, 2011.

The proposed renovation and tenanting of this landmark building will return a publically-owned building to the property tax rolls with proposed retail uses that will generate sales tax revenue. This project will also serve as an economic development and revitalization catalyst to encourage other projects in the downtown.

The Southport Land Company contacted staff and expressed interest in purchasing 630 Court approximately nine months ago. The building is owned by the City of Martinez and has sat vacant for seven years. The City purchased the building from the County with the sole purpose of reselling the property to a private developer. The Council was amendable to the purchase offer and directed staff to exercise due diligence in implementing a development agreement with Southport Land Company.

Due to some of the inherent constraints with developing 630 Court Street, Southport indicated interest in also purchasing 610 Court Street. To meet the minimum square footage needed for a restaurant and bakery, in addition to building ADA and trash enclosure access, Southport expressed interest in purchasing the property at 610 Court Street. The County has initiated this process and staff has prepared a staff report for the December 21, Council meeting to notice the properties located at 610 and 630 Court Street, and begins the official hearing for disposing of both properties.

Because of the unique circumstances intertwining both 610 and 630 Court, and the fact that Southport Land Company has expressed interest in purchasing and developing both buildings in tandem, Council has directed the City Manager to coordinate the proceedings for disposition under the process outlined Section 12.40.040(c,d) of the Martinez Municipal Code and required by state law. Further, Council has deemed that both 610 and 630 Court Street will be noticed according to the City's municipal code and the two properties disposed by negotiation with Southport Land Company, and all information therewith conveyed to the residents of Martinez.

RESOLUTION NO. -12

RESOLUTION RECEIVING THE CITY MANAGER'S REPORT PURSUANT TO MARTINEZ MUNICIPAL CODE (MMC) SECTION 12.40.040 AND PRELIMINARILY DETERMINING THAT DISPOSITION OF THE PROPERTIES AT 610 AND 630 COURT STREET IS FOR THE COMMON BENEFIT OF THE CITIZENS OF MARTINEZ, REQUIRED BY THE PUBLIC INTEREST AND CONVENIENCE AND IN COMPLIANCE WITH APPLICABLE LAW AND AUTHORIZING THE CITY MANAGER TO COMMENCE THE PROCESS OF DISPOSITION OF THE PROPERTIES AT 610 AND 630 COURT STREET BY NEGOTIATED SALE; SETTING THE PUBLIC HEARING DATE FOR THE AUTHORIZATION OF THE ADDITION OF THE PROPERTY AT 610 COURT STREET TO THE CITY'S REAL PROPERTY INVENTORY CONTINGENT UPON ITS PURCHASE BY THE CITY IN ACCORDANCE WITH MMC SECTION 12.40.010 AND DECLARING THAT THE PROPERTY AT 610 COURT STREET IS IN EXCESS OF THE CITY'S FORESEEABLE NEEDS IN ACCORDANCE WITH MMC SECTION 12.40.030 AND FOR FINAL DISPOSITION OF 630 AND 610 COURT STREET FOR FEBRUARY 1, 2012 AND AUTHORIZING THE CITY CLERK TO PREPARE AND POST THE NOTICE OF POTENTIAL DISPOSAL OF PUBLIC PROPERTY PURSUANT TO MMC SECTION 12.40.060 AND 12.40.030

WHEREAS, City staff and the Southport Land Company are making significant progress moving the 630 Court Street acquisition process forward; and

WHEREAS, City staff and the Southport Land Company have determined that it is desirable and in the best interest of the public to purchase and dispose of 610 Court Street simultaneously with 630 Court Street; and

WHEREAS, in order to comply with the City's property disposition process pursuant to Chapter 12.40 of the Martinez Municipal Code, it is necessary for the City Council to set a public hearing to consider the addition of the property located at 610 Court Street to the Inventory of Public Property and to declare the property at 610 Court Street to be, upon its purchase in excess of the City's foreseeable needs and further to set a public hearing to consider the final disposition of 610 and 630 Court Street by negotiated sale for February 1, 2012 at 7:00 PM; and

WHEREAS, the City of Martinez purchased 630 Court Street and will purchase 610 Court Street from Contra Costa County for the sole purpose of finding a qualified developer to rehabilitate, retrofit and re-tenant the building to serve as a catalyst project in the City's downtown revitalization efforts; and

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby receive the City Manager's report pursuant to MMC Section 12.40.040 and preliminarily finds that disposition of the real

property located at 630 and 610 Court Street is for the common benefit of the citizens of Martinez, required by the public interest and convenience and in compliance with applicable law and authorizes the City Manager to commence the process of disposition of the properties at 610 and 630 Court Street by negotiated sale based on the fact that the City is not in need of additional office or retail space and is acquiring said property in order to facilitate its return to private use, to further economic development in the downtown area consistent with the City's General Plan, Downtown Specific Plan and Zoning for the property as set forth herein and in the staff report and Manager's Report.

BE IT FURTHER RESOLVED that the City Council hereby sets the public hearing date to (1) consider authorization of the addition of the property at 610 Court Street to the City's Real Property Inventory contingent upon its purchase by the City in accordance with Martinez Municipal Code (MMC) Section 12.40.010; (2) to consider declaration that the property at 610 Court Street is surplus and in excess of the City's foreseeable needs in accordance with MMC section 12.40.030; and (3) to consider the final disposition of 630 and 610 Court Street for February 1, 2012; and

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to prepare and post the Notice of Potential Disposal of Public Property pursuant to MMC Section 12.40.060 combined with notice as required by MMC Section 12.40.030.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 21st day of December, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

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CHAPTER 12.40 - DISPOSITION OF CITY REAL PROPERTY

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12.40.010 - General.

- A. The real property of the City of Martinez is held in trust for the common benefit of all its citizens. It is the intent of this Chapter to assure that no disposal of City real property governed by this Chapter takes place unless the disposition is for the common benefit of all the citizens of Martinez and is required by the public interest and convenience.
- B. Subject to the exceptions set forth in Section [12.40.020](#), this Chapter shall only apply to proposed dispositions and dispositions of City real property for the exclusive use or benefit of specified parties (and shall apply to such exclusive use or benefit dispositions even where the City retains an easement or other interest in the real property in question).

Disposition of City real property governed by this Chapter shall require, among other things, a Council resolution finding that the disposition is for the common benefit of all the citizens of Martinez and is required by the public interest and convenience, coupled with a statement of the facts supporting such finding; provided, however, that should any state law apply to any such disposition, and should such state law require that certain findings be made in order to dispose of such real property, in the event that the City Council makes the findings required by such state law and, based thereon, finds that the proposed disposition is for the common benefit of all the citizens of Martinez, no further factual or other findings need be made and it shall be deemed that the disposition is for the common benefit of all the citizens of Martinez and is required by the public interest and convenience.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.020 - Exceptions.

This Chapter shall not apply to the following dispositions of City real property:

- A. The encroachments by public entities (or by private entities providing a public utility type service) into City rights-of-way that are governed by other chapters of Martinez Municipal Code [Title 12](#)
- B. Dispositions concerning City real property of 250 square feet or less;
- C. Vacations of City real property to which California Streets and Highways Code Section 8300 et seq. applies; provided that prior to the City Council approving any such vacation, Sections [12.40.040](#)(B) and (C) of this Chapter shall be complied with. The City Manager shall adopt procedures and policies to regulate vacations described in this subsection;
- D. The leasing and licensing of City real property;
- E. Any disposition of City real property which is not for the exclusive use or benefit of specified parties.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.030 - Inventory of City Real Property.

To comply with California Government Code Section 50569, on or before October 31 of each year, the City Manager shall cause to be prepared an annual inventory of real property owned by the City. That inventory shall also identify which City-owned real property, if any, is deemed to be in excess of the City's foreseeable needs. Such inventory and identification shall be submitted to the City Council for review and approval. The

City Council's hearing on the proposed inventory and identification (collectively "inventory") shall be noticed in accordance with California Government Code Sections 65091 and 65092, except that:

- A. The notice described in California Government Code Section 65091(a)(3) shall be mailed to all owners of real property as shown on the latest equalized assessment roll within 300 feet of each of the properties identified in the inventory;
- B. The notice shall be published pursuant to California Government Code Section 65091(a)(4)(A); and
- C. As to those properties identified as being in excess of the City's foreseeable needs, the notice shall specify an address (if one exists) and assessor's parcel number (if one exists) and include a locator map showing the subject property; and
- D. The notice shall specify the date, time and location of the public hearing.

Notwithstanding the foregoing, in the event the proposed inventory or proposed amended inventory identifies at least 5 separate parcels, the City may forego mailing the notice pursuant to subsection A above; provided that, in all cases, the notice specified in subsection A above shall be mailed to all owners of real property as shown on the latest equalized assessment roll within 300 feet of each of the properties identified in the inventory as being in excess of the City's foreseeable needs. The materials described above shall be made available for inspection and copying by the public at least 10 days prior to the Council's noticed hearing on the inventory. The inventory described above may be amended at any time by the City Council provided that the notice and hearing requirements specified above are first complied with. If the inventory proposed to be submitted by the City Manager to the City Council for approval pursuant to this Section does not identify any pieces of real property or does not add any real property to the previously approved inventory, or does not change the designation as to whether or not any property on the previously approved inventory is surplus, then no notice need be given prior to the submission of the inventory to the Council for approval other than is otherwise required by the Ralph M. Brown Act.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.040 - Council Action to Consider Proceeding to Dispose of Real Property.

- A. The Council shall not dispose of any real property unless it is identified as surplus in the inventory of City property described in Section [12.40.030](#) above, and has therefore been determined by the Council to be in excess of foreseeable City needs.
- B. Prior to any action to dispose of City real property, the City Manager shall prepare a report ("Council Report") to the City Council requesting authorization to initiate the process for disposition of the property; provided, however, that the City Manager shall not require authorization from the City Council prior and as a condition to preparing the Council Report.
- C. The Council Report shall include up-to-date, general information on the real property, the reasons for requesting its disposition, an identification of the person(s) or entity(ies), if any, to whom the real property is proposed to be disposed, a recommendation on whether it should be disposed of, and, if by sale, whether the City should dispose of the property by (1) negotiation or (2) public bid.
- D. In reviewing and taking action on the Council Report, the City Council shall: (1) determine whether or not the real property proposed for disposition is listed as surplus in the inventory required under Section [12.40.030](#) above; (2) determine whether the real property is required to be so listed; (3) if the real property is not so listed, determine whether as part of any other direction given to the City Manager, the City Manager should be instructed to initiate those steps necessary to determine whether the property should be designated as surplus; (4) irrespective of whether the real property is so listed, subject to and consistent with the last sentence of Section [12.40.010](#)(B) of this Chapter, preliminarily determine whether its disposition is for the common benefit of the citizens of Martinez, is required by public interest and convenience and is in compliance with applicable law (the preliminary findings described in this subsection shall not be binding upon the City); (5) preliminarily determine whether (a) any limitations should be imposed on the specified parties' use of the real property and/or (b) the real property should be merged or subjected to a lot line adjustment with adjacent properties; and (6) determine whether the Council is interested in pursuing or is opposed to the disposition of the real property. If after making these determinations, the Council is willing to permit the disposition of the real property to be examined and/or pursued further, the Council shall give instructions to the City Manager to coordinate the proceedings for disposition under the process outlined in this Chapter, as specified by the City Council and as otherwise required by state law. In giving such instructions to the City Manager, the Council may designate the method of disposition, including, but not limited to, public bid, negotiated sale or exchange.
- E. The City Manager may designate a City staff member to serve as the City's property manager to perform the functions and duties specified in this Chapter.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.050 - Review by Other Agencies.

Dispositions of real property governed by this Chapter (1) must be referred to the Planning Commission for a

General Plan consistency determination pursuant to California Government Code Section 65402, (2) may be referred to other City commissions or committees for a report containing information specified by the City Council, and (3) must be referred to other agencies if required under California Government Code Section 54220 et seq.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.060 - Review by the Public.

- A. Except with respect to the Council's approval of the annual inventory as provided in Section [12.40.030](#) above, prior to Council action on any disposal or proposal to dispose of real property, the Council shall provide notice in a newspaper of general circulation and post the notice at City Hall, with a prominent display "NOTICE OF POTENTIAL DISPOSAL OF PUBLIC PROPERTY."
- B. The notice shall remain posted at the City Hall beginning no later than one month prior to the date on which the Council will consider the property disposal. The notice shall also be published and mailed pursuant to Section [12.40.030](#) of this Chapter. In the event that Council consideration of the inventory described in Section [12.40.030](#) of this Chapter, the Council report and/or disposition of real property are scheduled for the same Council meeting, 1 notice may be utilized to describe 2 or more of such events, but the notice shall contain all of the information and comply with all the requirements required hereunder pertinent to each event so scheduled. At the same meeting, the Council may not consider and/or take action on (1) a Council report (pursuant to Section [12.40.040\(D\)](#) of this Chapter) and (2) the final disposition documents which pertain to the same real property.
- C. The notice shall contain a description of the real property proposed to be disposed of, the proposed use for the property and its general plan designation. The posted notice shall, in addition, contain a map showing the location of the property and all parcels within 300 feet of that property.
- D. The Council shall allow public testimony on the proposed disposal on the date of Council action.
- E. Copies of all documents prepared under Sections [12.40.070](#) and/or [12.40.080](#) of this Chapter shall be made available for public inspection at least 10 days prior to the date the Council takes final action on the proposed disposition.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.070 - Disposition of Property by Negotiation, Public Bid, Exchange or Other Method.

After the Council makes its preliminary and nonbinding determination specified in Section [12.40.040\(D\)](#) of this Chapter and direction is given to proceed with a real property's disposition, the City Manager shall determine whether the real property shall be disposed of by public bid, negotiation, exchange or some other method as long as in making its determinations pursuant to Section [12.40.040\(D\)](#) of this Chapter, the Council did not specify the manner in which the real property's disposition was to be effected. The City Manager's manner of disposition determination shall be consistent with the rules and regulations promulgated under Section [12.40.100](#) of this Chapter and shall be subject to the Council's approval. All fees and costs incurred by the City in disposing of real property under this Chapter shall be paid for by the person or entity desiring to acquire the real property; provided, however, that where necessary and appropriate, such fees and costs may be waived by the City Council.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.080 - Final Disposition of Property.

Only the City Council may approve or disapprove the disposition of the City's real property and shall do so under the terms and conditions of disposition approved by a majority vote of the entire Council.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.090 - Definitions.

As used in this Chapter:

- A. **"Disposal," "dispose" or "disposition"** means any sale, encroachment, franchise, grant of easement, conveyance and lot line adjustments.
- B. **"Real property"** shall be defined as specified in California Civil Code Section 658.
- C. **"Exclusive use" or "benefit"** or words of similar import means that the person or entity entitled to or granted such exclusive use or benefit with respect to real property shall have the right to exclude any or all persons and entities from that real property (except the City, if the City retains an interest in the real property) and/or prevent any or all persons from benefitting from that real property (except the City, if the City retains an interest in the real property).
- D. **"Specified parties"** means the person or persons (including entities) to whom real property is disposed under this Chapter.

(Ord. 1321 C.S. § 2 (part), 2005.)

12.40.100 - City Manager to Adopt Implementing Regulations.

The City Manager shall promulgate rules and regulations specifying the procedures and steps to be followed in implementing this Chapter.

(Ord. 1321 C.S. § 2 (part), 2005.)

TITLE 12 FOOTNOTES

1. For statutory provisions authorizing a City to regulate and prohibit encroachments and obstructions of public places, see Gov. Code § 38775.
2. [Chapter 12.36](#) of the Martinez Municipal Code is amended to change the term "Harbor Master" wherever that term may appear to the word "Operator."