



DATE: June 26, 2024

TO: Waste Management Authority Board

FROM: Kelly Schoonmaker, Senior Program Manager

SUBJECT: Amendment to Property Leasing Ordinance (Ordinance 2000-01)

SUMMARY

The Agency owns 1,600 acres in the Altamont Hills (“Property”), and has several lease and license agreements there, including telecommunications leases and licenses and a grazing license, some of which are nearing the end of their 10-year terms. The expiring agreements were approved under Ordinance 2000-01: An Ordinance Establishing Procedures for Certain Leases of Property Owned by the Authority, which, consistent with state law at that time, established a simplified, non-bid procedure for entering into non-renewable leases and licenses with a monthly rent amount that does not exceed \$5,000 and a term of 10 years or less. Staff recommends an amendment (Attachment 1) to Ordinance 2000-01 to increase the allowable monthly rental payment to \$10,000 to reflect changes in state law and to allow for the maximum monthly rental payment to be further increased if permitted by a future change in state law. Staff also recommends minor amendments to the Ordinance’s noticing provisions to align with state law.

At its June 13, 2024 meeting, the Programs and Administration Committee voted 11-0 to forward Ordinance 2024-02 to the WMA Board for adoption.

DISCUSSION

Under the Agency’s Joint Exercise of Powers Agreement for Waste Management (as revised 7/30/2013), the Agency’s manner of exercising its powers is subject to the same restrictions that apply to the County of Alameda. This includes state law restrictions that require counties to use extensive bidding procedures for many leases and licenses.

In 2000, the Agency adopted Ordinance 2000-01 under [Government Code Section 25537](#) (Attachment 2), a provision of state law that allows counties to enter into certain leases and licenses without going through a formal bid process. Ordinance 2000-01 establishes a simplified, no-bid procedure for entering into leases and licenses that are non-renewable, do not exceed 10 years, have a monthly rent not exceeding \$5,000, are of public benefit, and are compatible with the Agency’s uses of the Property. This Ordinance was enacted to provide an alternative pathway to complying with the leasing and licensing requirements for counties, which would have required a formal bidding process for most leases and licenses on the Agency Property. The Agency is not

required to use the simplified procedure allowed by Ordinance 2000-01 and retains the option to use the county formal bid process when entering into a lease or license.

Some leases and licenses approved under Ordinance 2000-01 are approaching the end of their terms. A summary of leases and licenses is presented in Attachment 3. Because these leases and licenses are non-renewable, if the Agency determines that it wants to continue leasing to any of these existing tenants, it will be necessary to enter into a new agreement with them. For one of these current leases, the tenant's monthly rent is high enough that a new lease agreement with them subject to the same pricing structure and escalation as the current agreement would cause their monthly rent to increase to more than \$5,000 during the term of the lease. That means that the Board could not approve such a new lease with this tenant under the Agency's Ordinance without first amending the Ordinance to increase the maximum allowable monthly rental. For that reason, as well as to ensure that that the Agency is able to enter into other new leases or licenses under the Ordinance that have a monthly rental of more than \$5,000 to reflect market rates, staff recommends an amendment to the Ordinance to increase the allowable monthly rental payment to \$10,000 and to allow this amount to be further increased if allowed by a future change in state law.

Staff also proposes minor changes to the Ordinance's notification provisions to better align with state law.

PROGRAMS AND ADMINISTRATION COMMITTEE ACTION

At its June 13, 2024 meeting, the Programs and Administration Committee voted 11-0 to forward Ordinance 2024-02 to the WMA Board for adoption.

RECOMMENDATION

Conduct a public hearing and introduce Ordinance 2024-02 amending Ordinance 2000-01 and waive a full reading of the ordinance, and direct staff to place it on the consent calendar for adoption at the next regular meeting of the Board.

Attachments:

Attachment 1: ACWMA Draft Ordinance 2024-02 Amending Ordinance 2000-01

Attachment 2: Government Code Section 25537

Attachment 3: Summary Leases and Licenses at Agency Property

ATTACHMENT 1

ORDINANCE 2024-02 AMENDING ORDINANCE 2000-01

ORDINANCE ESTABLISHING PROCEDURES FOR CERTAIN LEASES AND LICENSES OF PROPERTY OWNED BY THE AUTHORITY

The Board of the Alameda County Waste Management Authority (“Authority”) finds that:

1. In 2000 the Authority adopted Ordinance 2000-01, the Ordinance Establishing Procedures for Certain Leases of Property Owned by the Authority. The Authority now wishes to amend the ordinance to increase the allowable monthly rental payment to \$10,000 to reflect a change in state law, to allow for that monthly rental payment to be further increased if permitted by a future change in state law, and to update the ordinance’s noticing provisions.
2. The Board of the Alameda County Waste Management Authority held a public meeting on June 26, 2024, to consider this Ordinance, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

Therefore, the Board of the Authority hereby ordains as follows:

Section 1. Amendment.

Ordinance 2000-01 is hereby amended as shown in Exhibit A. Text to be added is indicated in bold underlined font (e.g., **underlined**), and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~).

Section 2. Severability.

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. Publication.

Within 15 days after adoption, a summary of the Ordinance with the names of those voting for and against shall be published and a certified copy of the full text with the names of those voting for and against the Ordinance shall either (i) be posted on the Authority’s website or (ii) be posted in the Authority’s offices. The Ordinance shall become effective 30 days after adoption.

- Continued on following page -

Following introduction on June 26, 2024, passed and adopted July 24, 2024 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of
ORDINANCE NO. 2024-02.

ARLISS DUNN
CLERK OF THE BOARD

Exhibit A

**ORDINANCE 2000-01
as amended by Ordinance 2024-02**

**AN ORDINANCE ESTABLISHING PROCEDURES FOR CERTAIN LEASES AND LICENSES OF
PROPERTY OWNED BY THE AUTHORITY**

The Board of the Alameda County Waste Management Authority ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this ordinance in full consisting of Sections 1 through Section 6.

SECTION 2 (Findings)

- (a) The Authority finds that the proposed process for entering into leases or licenses for real property owned by the Authority—which applies only to leases and licenses that are non-renewable, do not exceed 10 years, have a monthly rental not ~~in excess of~~ **exceeding ten** thousand dollars (~~\$5,000~~**10,000**) **or the amount authorized in Government Code section 25537 (or any successor provision), whichever is greater**, are of public benefit, and provide for uses that are compatible with the Authority's use of the property—will provide adequate notice to the public of such leases and licenses, ensure long-term stewardship of Authority property, and establish an efficient process for managing Authority property.
- (b) The Authority finds that it has the power to enact this ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this ordinance:

- (a) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management.
- (b) “Board” means the governing body of the Authority made up of elected representatives of the member agencies pursuant to the Joint Exercise of Powers Agreement for Waste Management.

SECTION 4 (Procedures for Entering into Specified Leases and Licenses for Authority Property)

Where the Authority proposes to enter into a lease or license for any real property belonging

to, leased by, or licensed by the Authority, where the lease or license is nonrenewable, does not exceed 10 years, ~~does not have~~ has a monthly rental ~~in excess of~~ not exceeding five ten thousand dollars (\$5,000~~10,000~~) or the amount authorized under Government Code section 25537 (or any successor provision), whichever is greater, will be of public benefit, and will provide for a use that is compatible with the Authority's uses of the property, the following procedures shall apply:

- (a) The Authority shall issue a notice that describes the property to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where the lease or license will be executed, ~~the~~ any Authority officer authorized to execute the lease or license, and the date of the public hearing on the lease or license.

- (b) The notice of the proposed lease or license shall be published in the following manner:
 - 1) posting of the notice with the County clerk;
 - 2) posting of the notice at the Authority office;
 - 3) at least 15 days prior to accepting the offers to lease or license the property, mailing of the notice to any person who has filed a written request for such notice with a person designated by the Authority receive these requests; and
 - 4) publication of the notice in a newspaper of general circulation two times, with ~~the first notice occurring~~ at least 15 days prior to accepting the offers to lease or license the property ~~and with at least six days between the publication dates, in a newspaper of general circulation.~~

- (c) Where the proposed lease or license involves residential property, notice shall also be provided to housing sponsors (as defined by section 50074 and 50074.5 of the Health and Safety Code).

- (d) The Authority shall hold a public hearing concerning the proposed lease or license and shall make a finding that the property subject to the lease or license will be used for compatible uses and that the lease or license will be of public benefit.

SECTION 5 (Exemption)

The provisions of Section 4 shall not apply to any lease or license that the Authority enters into with the state, or with any county, city, district, public agency, public corporation or public utility corporation.

SECTION 6 (Notice and Verification)

~~This ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.~~

ATTACHMENT 2

Cal. Gov. Code § 25537

Section 25537 - Alternative procedure for leasing or licensing county property

(a) In any county the board of supervisors may prescribe by ordinance a procedure alternative to that required by Sections 25526 to 25535, inclusive, for the leasing or licensing of any real property belonging to, leased by, or licensed by, the county. Any alternative procedure so prescribed shall require that the board of supervisors either accept the highest proposal for the proposed lease or license submitted in response to a call for bids posted in at least three public places for not less than 15 days and published for not less than two weeks in a newspaper of general circulation, if the newspaper is published in the county, or reject all bids.

(b) Leases or licenses of a duration not exceeding 10 years and having an estimated monthly rental not exceeding a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, not exceeding ten thousand dollars (\$10,000), may be excluded from the bidding procedure specified in subdivision (a), except that notice shall be given pursuant to Section 6061, posted in the office of the clerk of the board of supervisors, and if the lease or license involves residential property, notice shall be given to the housing sponsors, as defined by Sections 50074 and 50074.5 of the Health and Safety Code. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license. If a lease or license is excluded from the bidding procedure, the actual monthly rental in the executed lease or license may not exceed a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, may not exceed ten thousand dollars (\$10,000), the term of the executed lease or license shall not exceed 10 years, and the lease or license is not renewable.

(c)

(1) The board of supervisors may, by ordinance, authorize the county officer or officers as are deemed appropriate, to execute leases or licenses pursuant to this section.

(2) A county officer's authority granted by ordinance under this section may not be effective for more than five years.

(3) A county officer authorized by the board of supervisors to execute licenses pursuant to this section shall provide a notice to the supervisorial district office in which the property proposed to be licensed is located at least five working days prior to execution of the license. The notice shall describe the property proposed to be licensed, the terms and conditions of the license, and the name of the proposed licensee. If the supervisorial district office has not responded in writing objecting to the proposed license within five working days after the notice has been provided, the proposed license shall be deemed approved by the district office. If the supervisorial district office objects to the proposed license in writing within five working days, the license may be submitted for approval by the board of supervisors at a regular meeting.

(d) Notice pursuant to this section shall also be mailed or delivered at least 15 days prior to accepting offers to lease or license pursuant to this section to any person who has filed a written request for notice with either the clerk of the board or with any other person designated by the board to receive these requests. The county may charge a fee that is reasonably related to the costs of providing this service and the county may require each request to be annually renewed. The notice shall describe the property proposed to be leased or licensed, the terms of the lease or license, the location where offers to lease or license the property will be accepted, the location where leases or licenses will be executed, and any county officer authorized to execute the lease or license.

Ca. Gov. Code § 25537

Amended by Stats 2003 ch 732 (SB 93), s 3, eff. 1/1/2004.

Amended by Stats 2002 ch 221 (SB 1019), s 34, eff. 1/1/2003.

Attachment 3

Summary of Leases and Licenses at Agency Property

| Type of agreement | Lessee | 2023 Revenue | Lease expiration |
|------------------------|--|--------------|--------------------|
| License - grazing | Paulo Farms | \$25,100 | October 27, 2025 |
| Lease – telecom tower | Crown Castle T-Mobile | \$49,300 | October 22, 2025 |
| Lease – utility trench | T-Mobile | \$26,000 | March 31, 2029 |
| Lease – utility trench | Vertical Bridge | \$25,500 | October 16, 2026 |
| Lease – utility trench | AT&T | \$26,100 | August 14, 2027 |
| Lease – telecom tower | Vasco Winds | \$4,000 | September 30, 2030 |
| Lease – telecom tower | East Bay Regional Systems Communication Authority | \$3,600 | June 6, 2026 |
| Lease - residence | Private tenant | \$32,000 | Month to month |