

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: October 9, 2019

From: SUSAN BRANSEN, Executive Director

Reference Number: 4.14, Action

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Published Date: September 27, 2019

Subject: **Amendments to Procedures for Leasing Airspace to Public Entities  
(Resolution G-19-43, Superseding Resolution G-03-03)**

**Issue:**

Should the California Transportation Commission (Commission) approve new procedures for leasing airspace to public entities?

**Recommendation:**

Commission staff recommends the Commission approve the attached Resolution G-19-43 (superseding and replacing Resolution G-03-03), procedures for leasing airspace to public entities.

**Background:**

Pursuant to Commission Resolution G-03-03, the California Department of Transportation (Department) may enter into leases with public agencies without specific Commission approval for each airspace lease whenever the Department finds:

- a. That the lessee is a public entity as defined in the Public Contract Code.
- b. That the lease will fulfill a public purpose.
- c. That the Department will receive fair market rent for the property.

On September 17, 2018, Governor Brown signed into law four bills that authorize the Department to lease properties to be used to provide homeless services in certain cities for one dollar per month. To date, authorization for a lesser than fair market value for rent of these leases has been included in Streets and Highways Code sections 104.16, 104.17, 104.18, 104.21, 104.24, 104.25, and 104.26. With these statutes, or any similarly enacted statute, the Department may enter into leases with a public agency without specific Commission approval. As a result of these newly

enacted statutes, amendments to the Commission's existing procedures for leasing airspace to public entities are necessary. Additionally, a requirement for the Department to provide an annual report on the number and location of airspace leases authorized pursuant to statute enacted by the Legislature that defines a lesser than fair market amount for rent of the property was added.

Clarifying language was also included that, for the purposes of park or recreational use of airspace leases, the Department must find that the lease is for public access.

Attachments:

- Attachment A: Resolution G-19-43, superseding Resolution G-03-03 (a strikethrough version of this document is available upon request)

## **CALIFORNIA TRANSPORTATION COMMISSION**

### **Procedure for Leasing Airspace to Public Entities**

#### **RESOLUTION G-19-43 Superseding Resolution G-03-03**

- 1.1 WHEREAS, Section 104.12(a) of the Streets and Highways Code authorizes the Department of Transportation (Department) to lease the use of airspace above and below State highways to public entities in accordance with procedures to be prescribed by the California Transportation Commission (Commission); and
- 1.2 WHEREAS, Section 104.12(b) of the Streets and Highways Code authorizes the Department to make airspace available, with or without charge, to public entities for mass transit facilities; and
- 1.3 WHEREAS, Section 14013 of the Government Code provides that the Director of the Department of Transportation may lease airspace to local agencies for public purposes and may contribute toward the costs of developing local parks and other such recreation facilities on such areas; and
- 1.4 WHEREAS, funds can only be allocated for acquisitions when such acquisitions comply with environmental laws; and
- 1.5 WHEREAS, it is desirable to reduce Commission workload by minimizing the number of routine financial resolutions processed.
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission hereby authorizes the Department to enter into leases with public agencies without specific Commission approval for each airspace lease whenever the Department finds:
  - a. That the lessee is a public entity as defined in the Public Contract Code.
  - b. That the lease will fulfill a public purpose.
  - c. That the Department will receive either:
    - i. fair market rent for the property, or;
    - ii. a lesser amount as authorized by any statute enacted by the Legislature, so long as the property satisfies the limitations and conditions set forth in the applicable statute.
- 2.2 BE IT FURTHER RESOLVED, that the Department shall provide an annual report to the Commission on the active airspace leases authorized pursuant to section 2.1c.ii above.
- 2.3 BE IT FURTHER RESOLVED, that the Department may enter into airspace leases with public mass transportation agencies at fair market value lease rates less a twenty percent (20%) discount, subject to specific Commission approval;

- 2.4 BE IT FURTHER RESOLVED, that when it is determined that park or recreational use is appropriate, the Department may use, as all or part of the consideration for a lease for park or recreational purposes, any substantial benefits the Department derives from the local agency's maintenance or landscaping costs which would otherwise be the obligation of the Department whenever the Department finds:
- a. That the lessee is a municipality or other local agency as defined in the Government Code.
  - b. That the use is for park or recreation purposes only.
  - c. That the lease is for public access.
  - d. That the lessee agrees that whenever the leased land is needed for transportation purposes the lease shall terminate.
- 2.5 THEREFORE BE IT FURTHER RESOLVED, that this resolution supersedes and replaces Resolution G-03-03.