



CITY OF  
**PALO  
ALTO**

## City Council Staff Report

**From: City Manager**

**Report Type: ACTION ITEMS**

**Lead Department: Community Services**

**Meeting Date: October 16, 2023**

Report #:2308-1949

### **TITLE**

Direction to Staff to Develop a Proposal to Lease the Cubberley site from the Palo Alto Unified School District for 55 years or Provide Alternative Direction to Transfer Ownership or Control to the City; CEQA status – not a project.

### **RECOMMENDATION**

Staff recommends that Council approve development of a proposal for a 55-year ground lease for improvement and community use of the Cubberley campus to be submitted to Palo Alto Unified School District (PAUSD), in conjunction with the Cubberley Ad Hoc Committee. Upon finalization of a proposal, staff will agendaize an open Council session to review proposal specifics and next steps. Alternatively, Council may direct staff to develop a proposal based on a different structure.

### **EXECUTIVE SUMMARY**

On March 13, 2023, the PAUSD Board of Education provided a letter to the Palo Alto City Council inviting the City to submit one or more proposals to transfer a portion of PAUSD-owned land at Cubberley to the City (Attachment A). The Council discussed the invitation at a Study Session on May 15, 2023. A closed session discussion was scheduled for August 2023; however, the Council chose to schedule an open discussion in lieu of the closed session.

Staff have reviewed the methods by which the City could acquire land from PAUSD at Cubberley and recommends the Council direct staff to develop a proposal for a 55-year ground lease of the Cubberley site to expedite improvement of the site for community use and benefit. Staff would engage with the Cubberley Ad Hoc Committee to develop a proposal and then return to the Council for further direction and next steps. While there are other means by which the City could acquire land at Cubberley, e.g., land trade or purchase, a ground lease appears to provide the greatest benefit to the City because it allows the City to proceed quickly to assume primary responsibility to improve areas of the Cubberley site without first negotiating new ownership boundaries and land purchase. A ground lease is the most expedient way to begin the public

planning process for improvements of greatest interest to the community. Additionally, a ground lease would not require the City to relinquish ownership of other properties within the City that provide community value.

## **BACKGROUND**

In March 2023, the PAUSD Board of Education provided a letter (Attachment A) to the Palo Alto City Council inviting the City to submit one or more proposals to transfer a portion of PAUSD-owned land at Cubberley to the City. The letter states the Board of Education is "...open to a deal that transfers ownership or development control over at least 7 additional acres to the City..." so the School District can retain 20 acres for development of a future school. However, the letter also states that they would be open to a proposal that transfers more than 7 acres to the City and expressed flexibility around the exact location of the City's acquired acreage. The School District would like to reserve their acreage for a future school site as they determine necessary.

Following receipt of the March 2023 letter, the City Council held a Study Session on May 15, 2023 to provide feedback to staff and discuss next steps. The study session staff report<sup>1</sup> and presentation<sup>2</sup> provide detailed history and background information on the Cubberley site. A full history of the Cubberley site and summary of previous master planning efforts can be found in Attachment B. Staff suggested the following questions be discussed:

1. What is the process the City Council would like to use for discussions and communications with the School District?
2. What would the City Council like to include in a proposal to the School District?
3. Would the City Council like to designate a committee to work with staff on proposal development?

Much of the discussion was focused on the order in which a plan for Cubberley should be developed. For example, should a development plan drive how much land the City should acquire, or should the land transaction precede land planning efforts? There was some discussion on Cubberley finances, which was presented by staff with the caveat that the financials were preliminary since Cubberley expenses are included in several department budgets and cost centers and are difficult to track. Following the study session, staff refined the budget numbers, and a summary is included in the Fiscal/Resource Impact section of this report. One outcome of the Study Session was the assignment of an Ad Hoc to work with staff on proposal development consisting of Mayor Kou, and Councilmembers Lythcott-Haims and Burt.

A Closed Session of the City Council was scheduled for August 21, 2023; however, the Council unanimously passed a motion to not go into Closed Session and directed staff to bring the item

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<sup>1</sup> City Council, May 15, 2023, Agenda Item # 2, SR#2304-1339, <https://cityofpaloalto.primegov.com/Portal/viewer?id=1610&type=2>

<sup>2</sup> City Council, May 15, 2023, Agenda Item #2, <https://cityofpaloalto.primegov.com/Portal/viewer?id=1635&type=2>

back to Council in an open session. Council members said that an open session should be sequenced first to allow for greater transparency. Since the Closed Session can only include discussions on price and terms of payment, the Council first wanted to review the different real estate methods to acquire land and discuss how much land to acquire before going into a Closed Session.

## **ANALYSIS**

Of the 35-acre Cubberley site, currently the City owns eight acres and PAUSD owns 27 acres. The City leases a portion of the 27 acres including the athletic fields, gyms, pavilion, theater, and several smaller rooms. The City currently pays PAUSD \$2.5 million per year to lease the Cubberley space and allocates \$1.8 million per year for facility capital improvements. In addition, the City's budgeted costs to operate Cubberley in FY 2024 is \$2.6 million, which includes costs incurred by Community Services, Public Works, and Real Estate for day-to-day operations, customer service, upkeep, and tenant/renter relations.

### *Land transfer options*

There are several methods by which the City could acquire land from PAUSD at Cubberley – purchase, land trade, or ground lease.

*Purchase* – A direct purchase would transfer ownership of a portion of the Cubberley property from PAUSD to the City, also known as fee title acquisition. A land acquisition would give the City full control of the acquired property and allow the City to use the property in any manner consistent with federal, state, and local laws and ordinances. A purchase agreement would require a formal land appraisal, a public discussion and Council decision on the amount of land to purchase, and the portion of the Cubberley property to acquire (within the Cubberley site). A funding source would need to be identified.

Benefits: City has full control of the acquired property indefinitely.  
Reduced costs associated with leasing PAUSD facilities.

Constraints: Aging utilities infrastructure would be difficult to replace if the City only has control of a portion of the property.  
The public process to determine the amount and location of land to acquire within the Cubberley site could be lengthy and would likely occur before the actual purchase took place.  
Securing a funding source could result in delays to site planning and improvement.

*Land trade* – A land trade, or swap, would transfer ownership of a portion of the Cubberley property from PAUSD to the City in exchange for an equivalent property owned by the City. Ownership of the traded property would then be transferred from the City to PAUSD. A land trade would require a lengthy public discussion and a Council and Board of Education decision

on the amount of acreage at Cubberley that would be acquired. Both parties would need to agree on the city-owned land to be traded. Additionally, the parties would need to agree on whether an even swap would be based on acreage or the appraised value of the properties. A land swap was how the City previously acquired approximately 8 acres at Cubberley.

If the property to be traded is dedicated parkland, it must be undedicated *prior* to ownership transfer to PAUSD. Article VIII of the City Charter requires that any land dedicated for the use of park, playground, recreation, or conservation purposes cannot be sold or otherwise disposed of without a majority vote of the electorate. The Council could decide to put a measure on an upcoming ballot, such as the General Election in November 2024.

**Benefits:** City has full control of the acquired property indefinitely.  
Reduced costs associated with leasing PAUSD facilities.  
A one-to-one land exchange would have no direct land acquisition costs.

**Constraints:** Aging utilities infrastructure would be difficult to replace if the City only has control of a portion of the property.  
The public process to determine the amount and location of land to acquire within the Cubberley site and the land to trade could be lengthy and would likely occur before the actual land swap could go forward.  
Time and expense to place an item on a general or a special election ballot if the traded land is dedicated parkland.  
Loss of dedicated parkland if the traded land is parkland.

*Ground lease* – A ground lease is typically a long-term lease agreement of unimproved land or previously developed property where the tenant constructs new improvements. Lease terms customarily run from 30 to 100 years or longer. The tenant typically holds ownership of improvements during the ground lease term and is obligated to pay all expenses attributable to the property. Commercial ground lease pricing commonly runs 5-10% of the value of the land. Long-term ground leases are a very common means to enable capital investment in a property while the property owner retains title to the property. As examples, this approach has been used for the Avenidas building, as well as Stanford Shopping Center, Stanford Research Park, and Google development in Mountain View. Under this arrangement, as the end of the term approaches, the parties engage in negotiations over extension of the lease, additional investments, or return of some or all of the property to the owner.

**Benefits:** City controls land and can develop the land it leases without the purchase costs.  
The public process to plan the future of the site can begin as soon as a lease is executed.  
Replacement or upgrades to utility infrastructure can be considered for the entire site.

Constraints: City would need to relinquish a portion or all of the leased land when PAUSD determines it has a need for an additional school or other purpose in the future.

### *Key Cubberley Site Considerations*

While the PAUSD letter suggests interest in releasing more of the site, the determination of which portion(s) of the site to pursue in advance of another master planning effort would be very challenging. This is due to several factors:

- Existing buildings are served by an interconnected system of utilities (power, water, sewer, storm drainage), much of which is deteriorated beyond its intended lifespan. Improvement of major systems should include all buildings intended for near-term use; alternatively, investment in selected buildings would require significant coordination to ensure no negative effect on buildings retained by PAUSD.
- All building uses are dependent on parking and access through the site, which are primarily located on PAUSD property. This makes redevelopment of a City portion likely dependent on continued availability and use of PAUSD property.
- In order to redevelop a new community center at Cubberley, a significant planning effort is required to determine which existing buildings should be replaced, as well as address parking, access, and sequencing. Such planning would need to be undertaken before an informed decision could be made on where to draw new boundaries between City and PAUSD-controlled properties.
- There are significant unknowns affecting the City's timing and ability to plan and implement improvement of the site, including decision-making, financing, and transitioning current uses. Given this, the City assuming primary responsibility for financial risks associated with such unknowns would relieve PAUSD from participating in these costs.

These considerations lead to the conclusion that the best strategic path forward is for the City to pursue a long-term ground lease to gain primary responsibility for management of the property.

### *Staff recommended proposal*

Staff recommends the City propose a ground lease for the maximum acreage PAUSD is willing to lease for a term of 55 years, while supporting PAUSD use of areas it determines it needs in the near term through a lease-back arrangement. This ground lease amount may be less than PAUSD's 27 acres due to an approximately 1-acre area that provides access to the Greendell school site and any area with buildings that are considered part of the Greendell school campus, as well as other PAUSD needs over the next few years such as for campus renovations at other schools. Attachment C provides a visual depiction of responsibilities for managing the buildings, fields, and open areas at Cubberley under the current lease and with a long-term ground lease.

It is assumed that PAUSD will want to lease-back buildings and parking lot areas it currently occupies for educational purposes, though these uses may be relatively short term.

A ground lease allows the City to proceed quickly to assume primary responsibility to improve areas of the Cubberley site without first negotiating new ownership boundaries and land purchase, while also enabling PAUSD to retain its stated interest in retaining ownership. A ground lease is the most expedient way to begin the public planning process for improvements of greatest interest to the community. Additionally, a ground lease would not require the City to relinquish ownership of other properties within the City that provide community value.

A ground lease would not preclude a subsequent land trade; a land trade could be pursued after a ground lease is agreed upon or independently. A ground lease could include terms to define how a land trade would affect the lease, such as simply reducing the amount of land leased. Conversely, a land trade alone would not be sufficient to enable the City to proceed with site planning independent of PAUSD, given the key site considerations noted above.

#### **FISCAL/RESOURCE IMPACT**

Staff recommends that should the City Council wish to proceed with the long-term ground lease approach, staff will work with the Cubberley Ad Hoc to develop a proposal and return to Council in an open session for review and discussion. A closed session could be scheduled as an intermediate or subsequent step to discuss the price and terms of payment. Alternatively, Council could choose to discuss proposed financial terms in open session. It should be noted that compensation to PAUSD for lease payments will not be available for investment in facilities nor programming at the site.

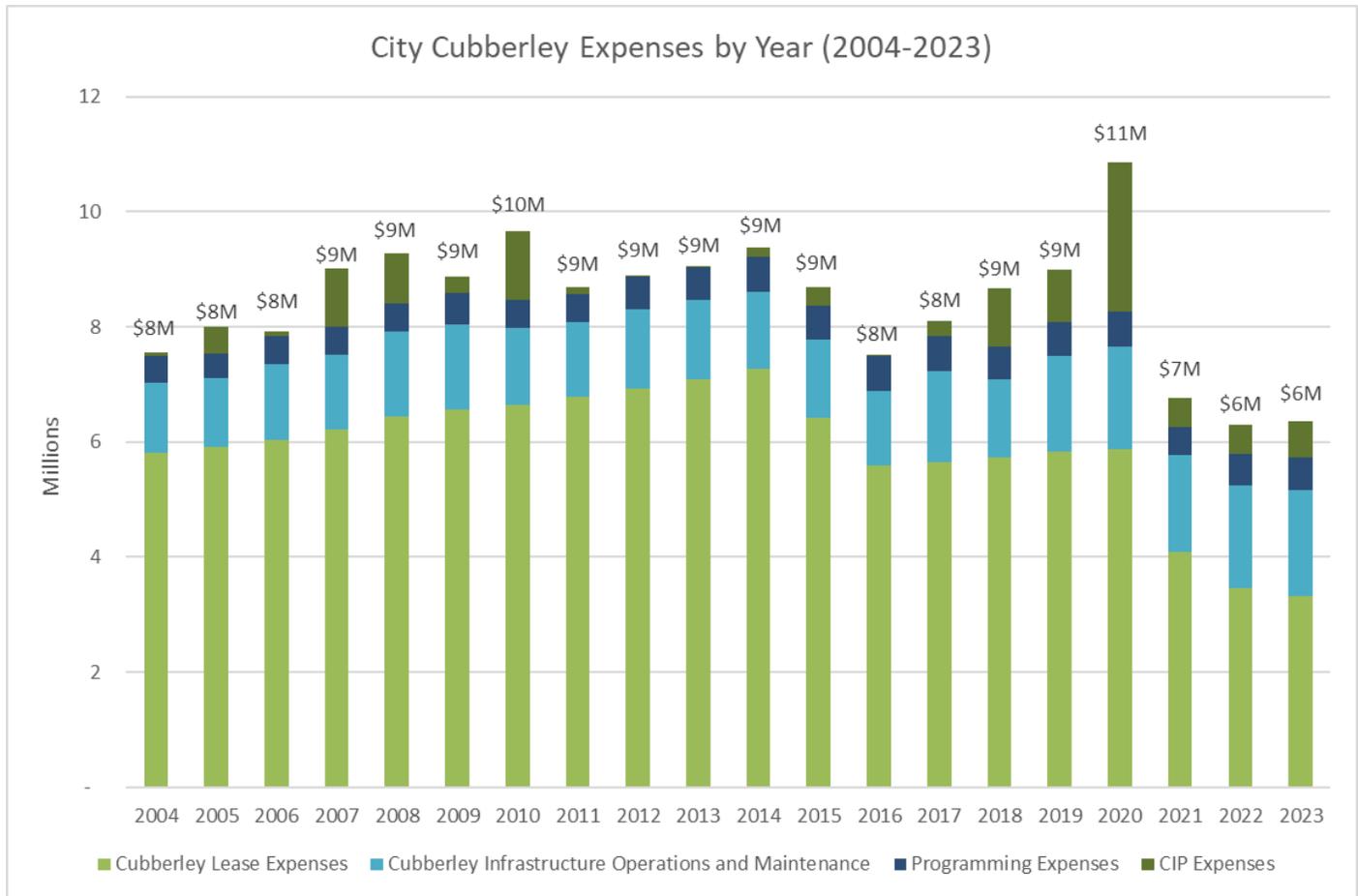
To provide a context for this discussion, staff has prepared the following summary of Cubberley financial considerations.

*Cubberley Financials*

The table below contains information about the City funds budgeted for Cubberley in the current FY 2024 Fiscal Year.

| FY 2024 Adopted Budget<br>\$ in Thousands | General<br>Fund -<br>Ops        | Cubberley<br>Infrastructure<br>Fund - Ops | Cubberley<br>Infrastructure<br>Fund - Capital | Total           |
|---|---------------------------------|---|---|-----------------|
| <b>Revenue</b>                            |                                 |   |   |                 |
| Transfer from General Fund                |                                 |   | \$1,864                                       | <b>\$1,864</b>  |
| PAUSD Reimbursement                       |                                 |   | \$1,553                                       | <b>\$1,553</b>  |
| Rental Income (short & long-term tenants) | \$2,722                         |   |   | <b>\$2,722</b>  |
|   | <b>Revenue Total \$2,722</b>    | <b>\$-</b>                                | <b>\$3,417</b>                                | <b>\$6,139</b>  |
| <b>Expense</b>                            |                                 |   |   |                 |
| Salaries & Benefits                       | \$1,427                         | \$260                                     | \$47  | <b>\$1,734</b>  |
| Contract Services                         | \$40                            |   | \$4,866                                       | <b>\$4,906</b>  |
| Other Expense                             | \$38                            | \$39                                      |   | <b>\$77</b>     |
| Utilities (& allocated charges)           | \$788                           |   |   | <b>\$788</b>    |
|   | <b>Expense Subtotal \$2,293</b> | <b>\$299</b>                              | <b>\$4,913</b>                                | <b>\$7,505</b>  |
| Cubberley Lease                           | \$3,489                         |   |   | <b>\$3,489</b>  |
| Transfer to Cubberley Infrastructure Fund | \$1,864                         |   |   | <b>\$1,864</b>  |
|   | <b>Expense Total \$7,646</b>    | <b>\$299</b>                              | <b>\$4,913</b>                                | <b>\$12,858</b> |

The following chart tracks expenses for the Lease (which includes the Covenant Not to Develop until 2015), Cubberley Infrastructure Operations and Maintenance, Capital Improvement Projects, and Programming from 2004 to 2023 with grand totals for each year. This summary does *not* include revenue nor recognize the amount that PAUSD pays back to the City for maintenance<sup>3</sup> or capital improvements; it is instead a summary of the City’s costs.



**Facility Assessment**

A Facility Condition Assessment was conducted for Cubberley Community Center in October 2022 by an independent firm to assess the current general physical condition of the developed portion of Cubberley. The area assessed encompasses 18.5 acres and consists of 22 buildings and over 500 parking spaces. The Facility Condition Assessment Report has not been finalized, but the

<sup>3</sup> In the current lease agreement that commenced on July 1, 2020, PAUSD is responsible for maintenance and repair costs for buildings not leased to the City. Maintenance costs of common areas (parking lots and walkways) are shared between the City and PAUSD.

draft findings describe Cubberley Community Center as being in poor condition, with over \$45 million of maintenance work recommended over the next 10 years. The report compares the 10-year maintenance cost for each individual building to the building's estimated replacement cost to develop what is called the Facility Condition Index. This analysis concludes that all but three of the Cubberley buildings have reached the end of their useful or serviceable lives.

The resource impact involved with next steps is dependent on Council direction and the subsequent response by the School District. Cost and terms of payment could vary greatly depending on the method proposed to acquire land (purchase, land swap or ground lease). Staff expect that existing staffing will support this effort; however, timing is uncertain.

### **STAKEHOLDER ENGAGEMENT**

Development of a long-term ground lease proposal and establishing an agreement with PAUSD should be considered foundational steps to reinitiating community engagement on opportunities to improve Cubberley for continued community use.

### **ENVIRONMENTAL REVIEW**

Development The recommended action is not defined as a Project by the California Environmental Quality Act (CEQA).

### **ATTACHMENTS**

Attachment A: Invitation for Cubberley Development Proposals

Attachment B: History of Cubberley and Site Map

Attachment C: Cubberley Property Responsibilities – Current and Proposed Ground Lease

### **APPROVED BY:**

Kristen O'Kane, Community Services Director