

To: John McDonough, City Manager  
From: Cecil McLendon, Assistant City Attorney, and Jacob Wingate, Intern  
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Subj: Leasing City-owned properties to City employees

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## **EXECUTIVE SUMMARY:**

City Staff, at the request of the City Council, was asked to research the viability of renting the homes located on properties purchased by the City on Hammond Drive. The property purchases are protective buys in anticipation of a road widening project, with construction still anticipated several years away. One option under consideration is renting units to current City police officers and firefighters, at little- or no-cost. There are benefits and drawbacks to pursuing this course of action. The program would provide a cost-affordable alternative for public safety staff to live within the city and the surrounding neighborhood residents view the concept positively. As a governmental entity, the program would simultaneously place the City in a role as both employer and landlord. Also to be weighed are costs of renovation and ongoing repairs.

## **Background:**

Discussion surrounding the widening of Hammond Drive from Roswell Road to Barfield Road formally began in 2009, as the City hosted a public information meeting to discuss proposed changes to Hammond Drive. No design plans have been created or approved. With improvements in the economy, the City has seen a rise in redevelopment, including in this corridor with property prices increasing and an influx of older homes being razed and replaced with homes valued several hundred thousand dollars higher than the original structures. The City Council has expressed support for further study of the potential for widening Hammond Drive and included funding for the design of the roadway as part of the T-SPLOST initiative to be voted on by residents of Fulton County in November, 2016. With several properties coming on the market along the needed right-of-way segment, the City Council approved purchases of those properties to enable the City to cost effectively acquire needed property. Residents in the surrounding neighborhood raised questions to the City Council regarding property upkeep, including the option of renting current homes to public safety personnel.

## **BENEFITS:**

There are several benefits to having police and fire department personnel living in the City-owned houses. There is a perception that a neighborhood becomes safer when public safety officials reside in the area. The presence of patrol vehicles and the observation that police regularly visit an area serves as a deterrent, contributing to potential decline in crime within an area. Firefighters are able to educate their neighbors about fire or safety hazards and could potentially provide medical support before on-duty responders can arrive. Further, City employees as residents can benefit the City, both in reputation and support, by building positive relationships with other community members. These employees may enjoy shorter commutes and may be able to get to their posts faster in the event of an emergency.

## **LANDLORD CONCERNS:**

By owning the properties and renting to employees, the City becomes a *de facto* landlord, thereby taking on certain obligations.

## **Repairs and Maintenance:**

- The houses purchased by the City will need to be evaluated to determine the amount of renovation and repair necessary to make the houses habitable. These cost factors should be weighed against possible benefits of leasing to employees. In addition, if a road improvement project moves forward, the houses will be demolished, thereby negating any renovation costs.
  - Inspections need to reflect all possible repairs or renovations and identify possible costs.
  - A maximum dollar amount should be designated as an acceptable investment. If necessary repairs exceed this threshold, the house should be demolished.
  - This process should be repeated after each purchase to determine costs of repairs needed as the result of damages or wear-and-tear.
- The responsibility for, and costs of, ongoing repairs needs to be carefully considered.
  - As landlord, the City will be responsible for responding to concerns of tenants, including both routine and emergency repairs. The City will need to identify what department and/or point of contact to handle those requests, as well as parameters on what repairs will be made by the City and at what cost, as well as when, how, and what repairs are the responsibility of the tenant.
  - Problems may develop after tenants take possession, including expensive capital repairs such as a roof or air-conditioning system repairs. The City may be obligated to make repairs, or if the repairs are outside the cost parameter, terminate the lease of the tenant.
  - Through careful crafting of the lease contract, repairs and maintenance can be made the responsibility of the tenant. Problems may arise if tenant is not able to afford certain repairs, or if the tenant fails to maintain the property, including the exterior surroundings. Poor maintenance would reflect negatively on the City, and the City could be placed in a position where the City would be required to perform the maintenance or cite itself for code violations.

**Insurance:**

The real property would be required to be added to City liability insurance with the cost to the City be determined. Tenants would be required to purchase renter's insurance to cover personal property.

**CONCERNS SPECIFIC TO THE CITY AS COMBINED LANDLORD AND EMPLOYER:**

The City would be required to abide by all Landlord/Tenant laws concurrently with applicable employment laws.

**Taxes:**

The difference between the full value of the housing and the actual rent paid will likely need to be treated as additional taxable compensation to the employee. Exceptions exist, but this situation would not likely qualify (Appendix A, Appendix B-2). The value of the property would be determined through the hiring of an assessor or through an administrative agreement between the City and tenant based on an evaluation of surrounding properties. Each employee should consult with a personal accountant for an accurate estimate of tax liability.

**Legal Concerns:**

- Fairness:

- If there is more interest than there are properties available, a fair selection methodology needs to be developed, such as a lottery system. This process must be transparent to avoid claims of discrimination.
- The Society for Human Resource Management reported in March 2015 that “it is not necessary under federal laws to give equal benefits to all employees, but an employer should base benefit eligibility on tenure, full- or part-time status, exempt/nonexempt status, job group or even department. An employer must exercise due diligence to ensure its benefits are not discriminatory.”
- The lease would need to be thoroughly reviewed to protect the City and would need to include:
  - A list of lease termination events, including commencement of a construction project.
  - A provision that housing is dependent on maintaining employment. If the employee were to separate from the City, he or she would also need to vacate the property.
  - The responsibility for maintenance and right to inspection.
  - Minimum and maximum lengths of occupancy.
  - The obligations of the City and the tenant for maintenance and repairs.

**Consideration of a Worst-Case Scenario:**

If an employee living in City-owned housing were to be terminated and subsequently evicted, it opens the possibility for the terminated employee to claim the eviction a retaliatory action or other discrimination resulting from wrongful termination. The eviction could be stayed while the litigation is pending. In this case, the former employee would live in the house rent-free and could damage the property or make a series of expensive demands for repair. The City would need to file for dispossessory action, further exposing the City to legal action. Even if the City is found to be not at fault, the possible negative attention given to the issue could undermine any benefits in providing the housing to City employees.

**RECOMMENDATIONS AND NEXT STEPS:**

Following an evaluation of the benefits, costs and risks related to the lease option for City-owned properties to employees, Mayor and City Council have the option to determine whether to rent these homes to City personnel or to move forward with demolition, maintaining the property as green space until the commencement of construction.

If Mayor and Council choose to pursue the option of renting the homes purchased along Hammond Drive to City employees, the following procedure is recommended.

- **Each housing unit should be considered on a case-by-case basis. The condition of the houses and the properties vary, and an evaluation of each home/property should be a part of the consideration for further action to rent or demolish.**
- **The house and property should be inspected with possible costs forecasted. Included should be any needed renovations, capital repairs, minor repairs, ongoing maintenance, and any other determined expected expenses.**
  - **A maximum dollar amount \$\_\_\_\_\_ should be established as an acceptable City investment prior to rental determination. If necessary repairs exceed this threshold, the house should be demolished.**

- For each home available for rental, the City should solicit interest from Sandy Springs sworn police officers and certified firefighters. Information set forth should include relevant information such as the possible tax liability, length of lease, the requirements for maintenance, the consequences for failure to maintain, and the legal implications for combining employment and renting from the City. The employee should be advised to consult with an accountant for accurate financial information.
  - **The City will solicit levels of interest from personnel for a time period of 30 days. If, after the designated time period, no one has expressed interest, the house will be demolished.**
  - **If more than one employee expresses interest, a fair and impartial lottery will be conducted to award the benefit. The potential tenant will have the opportunity to review the terms of the lease with the City's Legal Office. If the tenant agrees to the terms, the City will then move forward on renovations and repairs.**
  - **Monthly rent will be established at \$\_\_\_\_\_ with an annual escalator of \_\_\_\_\_.**
  - **Employees will be responsible for cost of utilities, minor repairs and upkeep of the yard.**

## Appendix A

Conditions that may except the subsidized rent costs from being considered taxable income:

*“Housing provided for the convenience of the employer”*

To qualify, there must be a direct nexus between the lodging furnished and the interests of the employer. It must be required as a condition of employment, such that the employee must accept the lodging to properly perform the duties of employment, and he or she cannot have an option to accept cash in lieu of the lodging. Examples of this include being required to be available for duty at all times or because the employee would not be able to perform his or her duties without the lodging. The lodging needs to be living quarters that constitute an integral part of the employer’s business property, where significant activities are conducted.

*“Temporary Work Location”*

To qualify as a temporary work location, the employee must be traveling away from his or her tax home and regular place of business and the assignment must be one year or less. If the assignment is indefinite or expected to last more than one year, the employee’s tax home changes to the new location and lodging costs paid by the employer will be taxable unless another exception is met. If the employee has more than one place of work, the tax home can be identified based on hours, level of activity, and source of income at each location.

## Appendix B

Examples of a city government owning property and leasing to employees:

1. 11.12.2011: The City of Abilene, Texas, rents homes to three employees for a nominal cost of \$20. These employees live on sites with water utility and infrastructure operations and provide security and support to the facilities. The employees do not pay taxes on the reduced rent because the housing is considered to be provided as a benefit to the employer, not the employee.
2. 1.5.2016: The City of Industry, California, has provided subsidized housing in city-owned properties for several years. It was set up as “affordable housing,” but has been utilized by some employees making more than \$100,000. Rates were set (well below market value) and tenants chosen by the Industry Property Housing Management Authority. The City created the IPHMA and appoints two of the three board members. The City has now served eviction notices to employees in city-owned houses and is being investigated by the IRS for tax fraud.