



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh
Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: April 15, 2016

Approved

Date

4/15/16

SUBJECT: UPDATE TO THE CITY PROCEDURE FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING

REASON FOR REPLACEMENT MEMO

The original Council Memo submitted for the February 2, 2016 Council meeting is being replaced to reflect actions requested by the Council pertaining to conducting additional Public Outreach activities and to include additional information requested by Councilmember Rocha.

RECOMMENDATION

Adopt a resolution updating the current procedure for the disposition of surplus City owned property to reflect the general terms of Assembly Bill 2135 which was passed by the Legislature and became effective January 1, 2015.

OUTCOME

Approval of this recommendation will provide the Office of Economic Development and the Housing Department with the necessary direction regarding the sale of the City's surplus properties and the recording and monitoring of affordable housing covenants on qualifying properties.

BACKGROUND

Existing Procedure for Selling City-Owned Property

The procedure for selling City-owned property is detailed in Chapter 4.20 of the San Jose Municipal Code. This ordinance establishes various conditions and requirements in disposing of

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surplus City-owned property, including posting of the public notice of sale, timeframes, and circumstances in which Staff may engage in direct negotiation with a prospective purchaser. It also outlines different methods by which the City may sell real property including direct negotiations, a competitive process, conveyances by exchange, sale to an adjacent property owner, private sale of property for economic development, conveyance of property to government bodies and certain nonprofits and as otherwise directed by the City Council. The purpose of this memorandum is to clarify that the procedure outlined below is the procedure staff will follow when selling City property. The proposed procedure gives priority to affordable housing. If City staff proposes to use an alternate method to sell City property, staff will first seek Council direction to do so.

On April 30, 2013, Council approved amendments to the Municipal Code that implemented property sales processes that recognized differences between property types, the estimated value of a property based upon size and its development potential to more appropriately match a sale process to a specific category of property. The goals were to streamline and expedite the process which would recognize additional revenue, and ensure a more efficient use of limited staff resources. The revisions focused on the following areas:

- Creating three categories of properties for sale, with three more appropriate sales requirements based upon the development potential and estimated market value.
- Establishing concurrent action steps, rather than the previous sequential steps.
- Decreasing the number of Council actions required for the selling of surplus City owned property.
- Conducting Requests for Interest, instead of Requests for Proposal, for prospective buyers.
- Expanding Staff's ability to negotiate directly on sites unlikely to have multiple offers.
- Authorizing Staff to receive unsolicited offers on City owned properties.
- Increasing the City Manager's authority to authorize sales of properties that are not developable and have a market value that is less than \$500,000.

Attachment A outlines the current steps that are taken in identifying, evaluating, and selling surplus City owned property. The basic steps for disposing of surplus property include:

- Determine if there is a current or future use of the property that would benefit the City and the public;
- Determine if there are interested parties that may want to use the property for affordable housing, open space, or an educational use;
- Prepare an informational memo to Council advising of the intent to move forward with the surplus sale;
- If the property is less than \$500,000 and undevelopable, the City Manager has the authority to declare the property surplus to the needs of the City and process all documents necessary to complete the sale; and

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- Prepare a semi-annual report to Council of those properties that staff intends to begin reviewing for the purposes of conducting an analysis of surplus land as well as those properties that have been declared surplus and sold without bringing the action to Council during the previous period.

As mentioned above, one component of the surplus sale process involves providing notice to and negotiating in good faith to sell surplus property to entities that undertake affordable housing, open space, or an educational use. This practice is in accordance with former California Government Code Section 54222-54233 (“Section 54222”), which the City generally followed on a voluntary basis.

Government Code Section 54222

California Assembly Bill 2135 (AB2135) became effective on January 1, 2015. This Assembly Bill modifies procedures with respect to the sale of surplus properties by a local agency. Prior to the amendment, California Government Code Section 54222 required that any local agency selling surplus land provide notice to and negotiate in good faith to sell surplus property to entities that undertake affordable housing, parks, or school development (a “Preferred Entity”). If the price or terms of a sale to a Preferred Entity could not be agreed upon within 60 days, the City could sell the surplus land for fair market value to any interested party without restriction.

In general, the new legislation prioritizes affordable housing uses over park or school uses and prior to the sale to a private party. It also extends the negotiation period with a Preferred Entity from 60 to 90 days. If the local agency and the Preferred Entity cannot come to an agreement within 90 days, the City’s surplus land can be sold at fair market value on the open market, but with certain restrictions as discussed below.

As the law has been revised, it requires that an entity proposing to use surplus land for the development of low and moderate income housing agree to make not less than 25% of the total number of units developed on the property to be available at affordable housing costs or affordable rents to lower-income households for at least 55 years. In the event that more than one Preferred Entity makes an offer to purchase the surplus property, the new law requires that the entity that agrees to use the parcel for affordable housing purposes be given a preference. If more than one housing entity makes an offer to purchase the surplus property, the entity that proposes to provide the greatest number of units at the deepest level of affordability would be given first priority in the purchase of surplus land.

The revised law also extends the allowable payment period for surplus land sold for affordable housing purposes, to exceed 20 years, but it would be limited by the length of the affordable housing covenants.

The new amendments did not change the definition of surplus land, which includes exemptions for a parcel that is not contiguous to land used for a park, recreation, open-space, or low and moderate income housing purposes; and is not located in an enterprise zone; and is either: (a)

less than five thousand (5,000) square feet in size; (b) less than the legal residential lot size in the City; or (c) has no record of access and is less than ten thousand (10,000) square feet in size.

Affordability Restriction Requirement

As mentioned above, the revised law imposes new restrictions on surplus property even if there is no interest by Preferred Entities in purchasing the property. If the property is sold on the open market, the new law requires that if it is ever used for the development of ten or more residential uses, then the entity (or its successor-in-interest) must provide not less than 15% of the total number of units developed on the parcel(s) at affordable prices for rental or for-sale property. An affordable housing restriction documenting the total number of restricted units and the affordable prices must be recorded against the surplus land at the time of sale. This restriction is to run with the land for 55 years, and be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction.

ANALYSIS

As a charter city, San Jose is not required to follow the requirements of Government Code section 54220 et seq. Nevertheless, in the past City staff has generally acted in a manner consistent with State law as it pertains to the sale of surplus land because the prior law was purely procedural in nature and had minimal cost or direct financial consequence to the City as a result of following the procedures. Staff has analyzed the revisions to Government Code section 54220 et seq and has determined that it has policy benefits and challenges.

The benefit of the new law is that it strengthens both the ability for affordable housing developers to acquire surplus land including land from special districts such as the Santa Clara Valley Transportation Authority (VTA). It also contains an inclusionary housing requirement for land sold for market rate development and can be applied to rental developments since the restriction is imposed as a condition of the sale of the land. Lastly, since the loss of redevelopment, having an additional tool to support the development of affordable housing is critical to addressing the housing crisis.

However, the additional requirements imposed by the revised State law may result in a reduced sales price of the surplus properties, if the site is developable and subject to a restrictive covenant. The affordable housing restriction will decrease the rent or sales price that a developer will receive for the affordable units impacting the amount the developer is willing to pay for the site. In addition, the law provides that all properties that are greater than 5,000 square feet in size or greater than the legal residential lot size in the City be subject to a recorded affordability restriction, regardless of whether the parcel is ever developed for residential use. The City costs related to imposing and monitoring such provisions will also increase although they will be minimal.

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Based on the above analysis, staff recommends that the City continue to generally follow the revised State law as a means of promoting affordable housing within the City. However, in order to maintain its local municipal powers and preserve the City's ability to determine appropriate uses for its surplus properties, and to protect the value of properties that will never be appropriate for development as residential, staff is proposing modifications to the "Process for Determining Whether Property is Surplus" as described in Attachment B.

Stakeholder Feedback

A stakeholder meeting to discuss the proposed Surplus Property Policy was held on February 10, 2016. Approximately 30 people representing a broad range of affordable housing interests including developers, homeless advocates, and legal organizations attended the meeting. Staff from the Housing Department and the Office of Economic Development provided an overview of the proposed Council policy and responded to questions. Public comments received included:

- Concern that the City is not following all the required provisions of the California Surplus Land Act (AB2135).
- Concern that the policy is inconsistent with how other charter cities are implementing AB2135.
- Clarification if the proposed policy also included long term ground leases (35 years or more).
- Concerns that rental high-rise development in the Downtown would receive an exemption.
- Questions about land sales currently being negotiated – (See Attachment C).
- Desire to be notified regardless of the zoning because it might present an opportunity for a future affordable housing development.
- Clarification on how the policy would benefit homeless people.
- y restrictions on use.n on the sales process for SARA owned properties.
- Suggestions on how the City could redevelop underutilized buildings and include an affordable housing component.
- Questions regarding the exemptions and how they worked.
- Request for information on available surplus land sites (See Attachment D).
- Preference to have no sites deemed to be "undevelopable".
- Prefer that City staff not have the option to ask Council to except any property from the Surplus Sales process.

As a result of the input received, staff has modified and clarified the proposed policy as follows:

- Include long-term ground leases (35 years or more) as well as properties to be sold.
- Clarify that Preferred Entities will be notified on all surplus land sales regardless of the zoning.
- Continue to require surplus sites to be posted on the Real Estate website. This provision allows anyone from the public to view the current sites that are available.

- Include a notification requirement to the Preferred Entities when the City Council considers an exemption requested by staff to use residential land to meet another City goal. This ensures transparency in the process.

Overview of Surplus Sites

Surplus land sites provide opportunities for affordable housing developers to purchase land which may be developed for a residential purpose. Attachment D provides information on future potential surplus land sites that may be considered for sale and includes the location, current land use designation, any debt the property may be carrying, and the square footage of the property.

Staff will provide the list of potential surplus land sites to the affordable housing developers so they can review the list and they can identify sites that may be suitable for a future affordable housing development.

Real Estate staff maintains a list of all City real estate assets including location, size, zoning, and other property related information that has been placed in their custody. It should be noted that there are additional City owned properties outside of the inventory maintained in Real Estate that are maintained by other City Departments such as parks, housing sites, libraries, airport related property, and community centers.

Recommended Policy and Modifications to Current Procedure

Staff recommends the establishment of a City Council Policy regarding the implementation of surplus sale procedures that is consistent with the revised Section 54220 with the following revisions.

Exemption from the provisions contained in the revised Section 54220

The Council recently approved a five-year exemption for high-rise rental developments, located in the downtown, from the Affordable Housing Impact Fee to incentivize this type of development. Therefore, staff recommends that an exemption to the affordable housing requirement be provided for property sold for high-rise rental developments in the downtown if the developer obtains all necessary approvals from the Planning, Building, and Code Enforcement Department and pulls the projects building permits by June 30, 2021.

Priority Sales

The revised State law prioritizes the use of surplus land for housing over the development of parks or schools, with narrow exceptions. This limits the City's ability to determine the best use of surplus properties over the long term. In the past, the Council provided direction that the development of parks/open space and schools within the City of San Jose are important policy goals. A priority will be given to affordable housing; however, from time-to-time, the staff may request an exemption to meet another City goals and prioritize the sale of the surplus properties

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for parks, schools, or other reasons, such as economic development. If City staff recommends prioritizing uses other than multi-family housing uses for the City's surplus properties, staff will proceed to City Council for review and approval prior to releasing the site for sale.

Income Limits on For-Sale Housing

The State law limits surplus property used for the development of ownership housing to be affordable to and restricted to buyers at or below 80% of the Area Median Income (AMI), or \$84,900 annually for a four-person household. For a home to be affordable to such a household the law requires that the price be calculated at 70% of the AMI or \$74,410 annually or a sales price of \$252,000 for a family of four. This would result in a reduction in the cost of the land that the developer would be willing to pay to achieve this market price. Instead, staff recommends that for-sale units be priced to be affordable to 100% of AMI, or a sales price of \$434,000, targeting households up to 120% of AMI, or \$127,550 annually for a family of four (i.e., Moderate-Income) as eligible buyers.

A home priced to target a moderate-income household is still below market and the maximum income allowed to purchase the home is consistent with the Inclusionary Housing Ordinance. More importantly, it allows the program to serve moderate-income buyers such as public school teachers and health care workers who would not qualify for homes restricted to incomes below 80% of the AMI. As a result of the loss of redevelopment funds, the Housing Department has been unable to invest in moderate-income housing. Increasing the income limit for homeownership to moderate-income households allows the City to use its limited resources to meet the specific needs of our community.

For rental housing, the State law limits rents to those affordable to households at or below 60% of AMI (\$63,780 annually or less), for which the maximum rent would be \$1,595/month. This is the general standard used in the City's affordable rental housing program and requires no adjustment for purposes of the City's Surplus Property program.

EVALUATION AND FOLLOW-UP

Council approval of this memorandum will allow staff to return to Council with the sale of surplus properties in the near future. Several surplus property sales have been negotiated but have been delayed while staff pursued resolution of whether to implement new surplus property procedures in light of the change in state law.

The Office of Economic Development provides an annual report to the Council that summarizes the sales of surplus properties during the prior fiscal year. The report includes the number of properties sold and the amount for which each property sold. It also identifies those transactions where the Council has delegated authority to the City Manager to approve a sale (for undevelopable property that is sold for less than \$500,000). The report can be modified to include an indication that the property was sold for the purposes of affordable housing.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the April 26, 2016 Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

While the City has disposed of most of its developable surplus properties, the remaining sales would be impacted by modifying the City's previous procedure and adopting the attached Surplus Property Policy (See Attachment E). Since a fundamental principle of real estate is that the value of a property will decrease if it is imposed with restrictions or encumbrances, adopting the policy will potentially decrease the amount of revenue over the long term that the City would have obtained from the sale of surplus properties; however, as revenues from the particular surplus properties scheduled for sale in 2015-2016 are not anticipated to be negatively impacted by the policy, no budgetary actions are recommended at this time. Finally, while the policy will require additional staff time to administer property transactions and to monitor the affordability covenants, this increased effort is not anticipated to be significant.

CEQA

Not a Project, File No. PP10-069 (a), Staff Report.

/s/
KIM WALESH
Deputy City Manager
Director of Economic Development

/s/
JACKY MORALES-FERRAND
Director, Department of Housing

For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.

Attachments

ATTACHMENT A

Outline of Current Process to Determine Whether Property is Surplus

- A. Prepare the File** – Real Estate staff will confirm ownership, prepare various documents related to size and configuration, develop a preliminary estimate of value, and identify any restrictions on use.
- B. Conduct Internal Review** – Real Estate staff will communicate with internal stakeholders to determine if there is a current or intended future use of the subject property, in order to determine whether the property should be considered “needed for, or adaptable to, City use”.
- C. Conduct Public Outreach and Initiate the 54222 Process** – If no City use is identified, Real Estate staff will post a sign on the property notifying the public of the City’s intent to surplus the property, prepare notification to all parties that may want to use the property for affordable housing, open space, or educational use, and prepare notification to parties which have expressed interest in acquiring the property.
- D. Complete Public Outreach and Complete the 54222 Process** –Real Estate staff will evaluate public outreach efforts and re-consider potential for City use, and identify and negotiate with any interested parties that respond to the 54222 notification letter.
- E. Inform the City Council of the Results of Steps “A” through “D”, above** – Real Estate staff will prepare an informational memo to the City Council advising them of the results of steps “a” through “d”, above (including identification of all internal stakeholders and outside parties with whom communications were had, and a summary of the basis for all conclusions reached) and, if applicable, staff’s intention to proceed to surplus, market and dispose of the property.
- F. Complete Process** – Based upon the determination by Real Estate staff that the property: i) is not needed for, or adaptable to, City use, ii) is not independently developable, and iii) has a market value of less than \$500,000, the City Manager may adopt their decision to declare the subject property surplus, which decision shall include a summary of the basis for all conclusions reached concerning subsections i, ii and iii, immediately above. Such decision shall be posted on the City’s website, whereupon staff may proceed with disposition of the property. Such decision will not be adopted any sooner than fourteen days following the date of the informational memo described in step “E”, above. If the subject property is not deemed surplus by action of the City Manager as provided above, any decision to surplus must be taken to City Council for approval.
- G. Prepare Semi-Annual Report of Surplus and Sold Properties** – Real Estate staff will prepare an informational report of properties declared surplus and properties sold for the City Council on a semi-annual basis. This report is intended, in particular, to highlight for the City Council those properties that staff intends to analyze for the surplus process, as well as those properties that have been declared surplus and sold in the prior time period.
- H. Significant or Unusual Properties** – The City Manager may modify the process described above from time to time in order to accommodate circumstances applicable to significant or unusual properties.

ATTACHMENT B

Proposed Process to Determine Whether Property is Surplus to the needs of the City and Subsequent Sale of the Property

- A. Prepare the File** – Real Estate staff will confirm ownership, prepare various documents related to size and configuration, develop a preliminary estimate of value, and identify any restrictions on use.
- B. Conduct Internal Review** – Real Estate staff will communicate with internal stakeholders to determine if there is a current or intended future use of the subject property, in order to determine whether the property should be considered “needed for, or adaptable to, City use”.
- C. Fiscal Analysis by Internal Stakeholders** – If there is an interest expressed by an internal stakeholder, the requesting party conducts a fiscal analysis determining the cost/benefit of retaining the property. During the fiscal analysis Real Estate staff will determine if the property is independently developable and will develop a good faith estimate of the market value of the subject property.
- D. Retain Property in City Inventory** – If it is determined that there is a bona fide need to keep the property for City purposes, the property is removed from the list of potential surplus properties. If it is determined the property should continue to be considered for surplus sale continue to Step E.
- E. Inform the City Council of the Results of Steps “A” through “D”, above** – Real Estate staff will prepare an informational memo to the City Council advising them of the results of steps “A” through “D”, above (including identification of all internal stakeholders and outside parties with whom communications were had, and a summary of the basis for all conclusions reached) and, if applicable, staff’s intention to proceed to surplus, market and dispose of the property.
- F. Response from City Council from Information Memo** – If one or more of the Council responds to the Informational Memo requesting additional information Real Estate staff responds with the requested information. If there are no responses from the Council Real Estate staff proceeds to Step G.
- G. Initiate the 54222 Process** – If no City use is identified, Real Estate staff prepares the notification letter in accordance with Government Code Section 54220 et seq. and distributes to the current list of open space, educational use, and the Housing Department for distribution to affordable housing agencies (Preferred Entities). The Preferred Entities will have sixty (60) days (notification period) to notify the City of their interest in entering into negotiations for the acquisition of the property. At the conclusion of the sixty (60) day negotiation period, if a Preferred Entity has contacted Real Estate and expressed an interest in acquiring the property proceed to Step H. If no Preferred Entities have contacted Real Estate proceed to Step I.

H. Request to Purchase Received from one or more Preferred Entities – If one or more Preferred Entities request to purchase a potential surplus property Real Estate staff will negotiate in good faith with each entity individually for a minimum of ninety (90) days (negotiation period). At the end of the negotiation period which began at the conclusion of the sixty (60) day notification period (or a total of 150 days) identified in Step G, there are three (3) options.

Option One – A single Preferred Entity submitted a bid to purchase the property and the bid reflects the estimated market value of the property. Real Estate staff would continue to Step K.

Option Two – There are more than one bid submitted from Preferred Entities.

a. If the bids are from multiple Preferred Entities in affordable housing, open space, or educational use, the affordable housing bid is given the priority over the other submitted bidders. Real Estate staff negotiates with each affordable housing bidder until the highest most qualified bidder is determined. The highest most qualified bidder between multiple affordable housing entities is determined by the bidder that proposes the highest price for the property and the greatest number of units at the deepest level of affordability. Once the highest and most qualified bidder is determined continue to Step K.

b. If the bids are from multiple Preferred Entities which does not include affordable housing, Real Estate staff negotiates with each bidding party until the highest most qualified bidder is determined. Once the highest and most qualified bidder is determined continue to Step K.

Option Three – Staff are unable to reach an agreement with a Preferred Entity. Real Estate staff would continue to Step I.

I. Initiate Public Outreach – If no City use is identified, or there are no bids submitted by a Preferred Entity, or staff and the Preferred Entity are unable to reach an agreement, Real Estate staff will post a sign on the property notifying the public of the City's intent to surplus the property, post the surplus property on the Real Estate website, advertise the property in a local newspaper for a minimum of two consecutive weekends, post the property on various on-line services, and notify parties which have expressed an interest in acquiring the property.

J. Complete Public Outreach – Real Estate staff responds to any inquiries related to the property. If there is an offer proceed to Step K.

K. Complete Process – The transaction would either be with a Preferred Entity or private party and a determination needs to be made whether the property is developable or not. If the property is determined to be undevelopable proceed to Step L. If the property is determined to be developable proceed to Step M.

- L. Determine if the property is undevelopable** - Based upon the determination by Real Estate staff that the property: i) is not needed for, or adaptable to, City use, ii) is not independently developable, and iii) has a market value of less than \$500,000, the City Manager may adopt the recommendation of the Director of Economic Development and decide to declare the subject property surplus, which decision shall include a summary of the basis for all conclusions reached concerning subsections i, ii and iii, immediately above. Such decision shall be posted on the City's website, whereupon staff may proceed with disposition of the property. Such decision will not be adopted any sooner than fourteen days following the date of the informational memo described in Step "E", above. If the subject property is not deemed surplus by action of the City Manager as provided above, or does not meet the criteria above (ie. the property is developable) any decision to surplus must be taken to City Council for approval.
- M. Property is developable** -If the property is sold on the open market, the Surplus Sale policy requires that if it is ever used for the development of ten (10) or more residential uses, then the entity (or its successor-in-interest) must provide not less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental, for-sale, or long term lease (35 years or more) of the property. An affordable housing restriction documenting the total number of restricted units and the affordable prices must be recorded against the surplus land at the time of sale. The restriction is to run with the land for fifty-five (55) years, and be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction.
- N. Prepare Annual Report of Surplus and Sold Properties** - Real Estate staff will prepare an informational report of properties declared surplus and properties sold for the City Council on an annual basis. This report is intended, in particular, to highlight for the City Council those properties that staff intends to analyze for the surplus process, as well as those properties that have been declared surplus and sold in the prior time period, including those properties that were sold for affordable housing or where a housing restriction was recorded at the time of the transfer.
- O. Significant or Unusual Properties** - The City Manager may modify the process described above from time to time in order to accommodate circumstances applicable to significant or unusual properties.

ATTACHMENT C

List of Pending Surplus Properties Negotiated Prior to January 1, 2015

List of Pending Surplus Sales Negotiated prior to 1-1-15

Sum of Counter						
APN	PROPERTY LOCATION AND/OR ADDRESS	IMP TYPE 1	General Plan - 2016	Zoning - 2016	SQ FT	Total
015-03-016	Gold St, 1621	Vacant Land	Combined Industrial / Commercial	Planned Development	6534	1
259-35-026	Santa Teresa St at Carlyle St, NE corner	Vacant Land	Downtown Core	Downtown Core	6,534	1
259-46-097	Park Av, 460	Vacant Land	Downtown Core	Light Industrial	12,234	1
264-43-078	Bird Av, W side, btwn Fuller St & West Virginia St	Vacant Land	Residential Neighborhood	Two Family Residential	29,040	1
472-27-106	Reed St, E, btwn 3rd St, S, & 4th St, S	Vacant Land	Downtown Core	Downtown Core	10454	1
499-26-003	Cheswick Dr, N of, btwn McLaughlin Av & Sherlock Dr	Vacant Land	Residential Neighborhood	Single Family Residential	41818	1
569-46-001	Rebel Wy, N side, btwn Howes Ln & Joseph Ln	Vacant Land	Residential Neighborhood	Single Family Residential	6478	1
Grand Total						7

ATTACHMENT D

List of Vacant Property which are available for Potential Future Surplus Sales

Data from City Owned Properties - Feb 2014 - data is for research purposes only and has not been analyzed for accuracy!

Count of No.	APN	PROPERTY LOCATION AND/OR ADDRESS	IMP TYPE 1	General Plan - 2016	Zoning - 2016	SQ FT	Total
	015-30-058	Los Esteros Rd, N side, E of Grand Bl	Vacant Land	Open Space, Parklands Habitat	Commercial Industrial	137,535	1
	015-30-061	Hwy 237, N of, E of Artesian Slough	Vacant Land	Public / Quasi Public	Agricultural	454,330	1
	015-30-070	Grand Bl, E side, N of Los Esteros Rd	Vacant Land	Public / Quasi Public	Commercial Industrial	185,588	1
	015-43-022	Grand Blvd	Vacant Land	Open Space, Parklands Habitat	Planned Development	17,424	1
	015-43-023	Grand Blvd	Vacant Land	Open Space, Parklands Habitat	Planned Development	11,831	1
	249-65-102	End of West Court Cul de Sac	Vacant Land	Open Space, Parklands Habitat	Planned Development	9,817	1
	259-04-007	Guadalupe frontage road	Vacant Land	N/A	Commercial Office	25,280	1
	259-04-019	87 Fwy/Guadalupe Py at Mission St, W, SE corner	Vacant Land	Neighborhood / Community Commercial	Commercial Office	28,314	1
	259-05-078	Old San Pedro Street at Mission	Vacant Land	Neighborhood / Community Commercial	Commercial Office	12,197	1
	259-06-065	Guadalupe frontage road	Vacant Land	N/A	Commercial Office	3,215	1
	259-22-062	Coleman at Guadalupe River	Vacant Land	Open Space, Parklands Habitat	Two Family Residential	10,890	1
	259-29-036	Julian St, W, S side, E of Autumn St, N	Vacant Land	Transit Employment Center	Commercial Industrial	6,486	1
	259-35-026	Santa Teresa St at Carlisle St, NE corner	Vacant Land	Downtown Core	Downtown Core	6,534	1
	259-46-097	Park Av, 480	Vacant Land	Downtown Core	Light Industrial	12,234	1
	261-37-030	San Carlos St, W, N side, W of Montgomery St	Vacant Land	Combined Industrial / Commercial	Light Industrial	5,286	1
	264-25-126	Woz Wy	Vacant Land	Public / Quasi Public	Downtown Core	36,380	1
	264-25-127	Woz Wy	Vacant Land	N/A	Downtown Core	16,553	1
	264-25-128	Woz Wy	Vacant Land	N/A	Downtown Core	14,550	1
	264-26-100	Woz Wy	Vacant Land	N/A	Downtown Core	14,054	1
	264-41-087	Fuller Av, N side, btwn Bird Av & Delmas Av	Vacant Land	Open Space, Parklands Habitat	Single Family Residential	23,522	1
	264-42-001	Azusa's Av at Hannah St, SW Corner	Vacant Land	Residential Neighborhood	Light Industrial	6,098	1
	264-43-078	Bird Av, W side, btwn Fuller St & West Virginia St	Vacant Land	Residential Neighborhood	Two Family Residential	29,040	1
	403-38-001	Westmount Av at Yorkton Wy, SW corner	Vacant Land	Open Space, Parklands Habitat	Single Family Residential	27,443	1
	455-31-053	Evans Ln, E side, btwn Almaden Rd & Almaden Ex	Vacant Land	Neighborhood / Community Commercial	Planned Development	217,364	1
	455-31-055	Evans Ln, E side, btwn Almaden Rd & Almaden Ex	Vacant Land	Neighborhood / Community Commercial	Light Industrial	40,946	1
	472-11-003	Story Rd, N side, W of Remillard Ct	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	235,600	1
	472-11-009	Story Rd, N side, W of Union Pacific Railroad	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	564,973	1
	472-11-054	Story Rd, N of, W of Remillard Ct	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	744,440	1
	472-11-055	Story Rd, N of, W of Remillard Ct	Story Road Land Fill	Industrial Park	Industrial Park	89,862	1
	472-11-062	Story Rd, N side, btwn Remillard Ct & Union Pacific Railroad	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	483,914	1
	472-11-081	Story Rd, N of, W of Remillard Ct	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	249,639	1
	472-12-073	Story Rd, N of Senter	Vacant Land	Open Space, Parklands Habitat	Single Family Residential	16,615	1
	472-27-106	Reed St, E, btwn 3rd St, S, & 4th St, S	Vacant Land	Downtown Core	(blank)	10,454	1
	477-20-161	Wool Creek Dr	Vacant Land	Open Space, Parklands Habitat	Agricultural	585,844	1
	595-31-001	Noble Av, 14630	Vacant Land	Open Space, Parklands Habitat	Single Family Residential	165,528	1
	659-48-111	Aborn Rd at Alessandro Dr, SE corner	Vacant Land	Open Space, Parklands Habitat	Planned Development	5,891	1
	676-81-001	Yerba Buena Rd, N of, E of Doves Hill Rd	Vacant Land	N/A	Agricultural	182,516	1
	676-81-003	Dove Hill Rd, E side, N of Yerba Buena Rd	Vacant Land	N/A	Agricultural	65,776	1
	676-81-005	Dove Hill Rd at Deans Place Wy, SE corner	Vacant Land	Open Space, Parklands Habitat	Agricultural	14,810	1
	678-02-036	Basking Ridge Av	Vacant Land	Open Hillside	Planned Development	1,393,353	1
	678-03-036	Monterey Rd	Vacant Land	Neighborhood Community Commercial	Agricultural / R-1-5	112,050	1
	678-08-033	Hellyer Av	Vacant Land	Industrial Park, Open Space, Parklands	Industrial Park	85,621	1
	678-08-036	Hellyer Av	Vacant Land	Industrial Park, Open Space, Parklands	Industrial Park	229,125	1
	678-08-044	Hellyer Av	Vacant Land	Industrial Park	Industrial Park	40,075	1
	678-08-047	Hellyer Av	Vacant Land	Industrial Park, Open Space, Parklands	Industrial Park	127,630	1
	678-08-048	Hellyer Av	Vacant Land	Industrial Park, Open Space, Parklands	Industrial Park	65,775	1
	678-08-056	Hellyer Av	Vacant Land	Industrial Park	Industrial Park	10,998	1
	Grand Total						47

ATTACHMENT E

Draft of City Council Policy for Surplus Sales

City of San José, California

COUNCIL POLICY

TITLE POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	PAGE 15 of 8	POLICY NUMBER 7-13
EFFECTIVE DATE	REVISED DATE	
APPROVED BY COUNCIL ACTION		

BACKGROUND

On April 30, 2013, Council approved amendments to the Municipal Code 4.20, Procedure for Selling City-Owned Property that implemented certain processes to recognize differences between property types, including estimated value, size, and marketability, to more appropriately match a sale process to a specific property. The goals were to streamline and expedite the process which would recognize additional revenue and provide a more efficient use of resources.

Municipal Code 4.20, Procedure for Selling City-Owned Property provides that all sales of municipally-owned real property shall be accomplished: (i) by a competitive process; (ii) at fair market value; (iii) after notice to the public as provided in Section 4.20.010J.; (iv) upon council finding and determination that any such real property is surplus; and (v) otherwise upon such terms and conditions as the council may direct. The purpose of this Policy is to outline a process that is specific to residential surplus land and prioritizes affordable housing uses over park or school uses and prior to the sale to a private party.

The approved revisions to Municipal Code 4.20 focused on the following areas:

- Establishing concurrent action steps, rather than the previous sequential steps.
- Decreasing the number of Council actions required for the selling of surplus City-owned property.
- Distinguishing between developable properties and those properties which were deemed undevelopable such as fragments left over from a street improvement project.
- Increasing the City Manager's authority to authorize sales of properties that are not developable with a market value that is less than \$500,000.
- Conducting Requests for Interest, instead of Requests for Proposal for prospective buyers.
- Expanding Staff's ability to negotiate directly on sites unlikely to have multiple offers.
- Authorizing Staff to receive unsolicited offers on City owned properties.

The Council also repealed the prior Council Resolution No. 74359 "Approving Recommendations for the Outreach and City Process for Sales of Surplus Properties" and approved the "Process for Determining Whether Property is Surplus", which was attached to the February 28, 2013 Council memo as Attachment A.

PURPOSE

This policy provides additional clarification and is designed to facilitate the process for identifying and disposing of residential surplus land as provided in the Municipal Code. The policy strengthens the ability for affordable housing developers to acquire surplus land, and it contains affordable housing requirements under certain circumstances. The policy also affirms that surplus land can be sold by the City for a below market rate. Finally, the policy restates Council's previous direction regarding the importance of promoting affordable housing within the City in addition to open space, and the development of educational institutions.

POLICY

The following information generally outlines the process that shall be used when evaluating City owned property for a potential surplus sale. Exhibit A to this policy provides the specific steps that shall be performed in determining whether a property is surplus to the needs of the City and if so, the actions that are required to sell the surplus property.

A. Determining Whether Property is Surplus to the needs of the City

1. Real Estate staff shall maintain a list of all City real estate assets including location, size, zoning, and other property related information that has been placed in their custody. It should be noted that there are additional City owned properties outside of the inventory maintained in Real Estate that is maintained by other City Departments such as parks, housing sites, libraries, airport related property, and community centers.
2. Real Estate staff shall confirm ownership, prepare various documents related to size and configuration of the property, develop a preliminary estimate of value, and identify any restrictions on use when a site is being evaluated for a potential surplus sale.
3. Real Estate staff shall communicate with other City Departments including but not limited to the Housing Department, Parks, Recreation and Neighborhood Services, Department of Transportation, and the Department of Public Works to determine if there is a current or intended future use of the subject property, in order to determine whether the property should be considered "needed for, or adaptable to, a City use".
4. If a City use is identified for the subject property, the Department requesting such use shall conduct a fiscal analysis for the property. During this internal review period Real Estate staff shall also undertake their analysis of whether the subject property is independently developable and develop a good faith estimate of the market value for the property.
5. Real Estate staff will prepare an informational memo to the City Council advising them of the results of steps "1" through "4", above (including identification of all internal stakeholders and outside parties with whom communications were had, and a summary of the basis for all conclusions reached) and, if applicable, staff's intention to proceed to surplus, market and dispose of the property.
6. If it is determined that there is a bona fide need to keep the property for City purposes, the property is removed from the list of potential surplus properties.
7. If no City use is identified, Real Estate staff shall:

- a. Provide a written notification letter with an offer to sell or lease the property for a period of 35 years or more to a "Preferred Entity" for the development of:
 - i. Affordable housing; or
 - ii. Parkland, recreational use, or open-space purposes; or
 - iii. School facilities.

All notices shall be sent by first-class mail and shall include the location and a description of the property. Priority shall be given to the development of the property to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

8. The Preferred Entities will have sixty (60) days (notification period) to notify the City of their interest in entering into negotiations for the acquisition of the property. At the conclusion of the sixty (60) day notification period, if a Preferred Entity has contacted Real Estate and expressed an interest in acquiring the property the parties will begin good faith negotiations at reaching an acceptable offer to both parties.

B. Preferred Entity Sales Process

1. If the City receives notification of the intent to purchase or lease from a Preferred Entity, the City shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If needed to achieve the public purpose, the sales price may be below the fair market value. If the terms cannot be agreed upon after a period of not less than 90 days, the land may be sold at fair market on the open market.
2. If the surplus property is zoned for residential development, and more than one Preferred Entity makes an offer to purchase or desires to enter into a long term lease (35 years or more) for the surplus property, the City shall give first priority to the Preferred Entity that agrees to comply with the affordable housing requirements or proposes to provide the greatest number of units at the deepest level of affordability.
3. If a Preferred Entity proposes to use the surplus property to develop low or moderate income housing, no less than twenty-five percent (25%) of the total housing units developed on the parcel(s) shall be available at affordable prices for rental for lower-income households or for-sale property to moderate income households for at least fifty-five (55) years.
4. If the site cannot be used for an affordable housing development, and if the property is already being used for a park or a recreational purpose, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose, first priority shall be given to a Preferred Entity that intends to use the site for a park or a recreational purpose.
5. A Preferred Entity may provide a payment period of up to 20 years for the property. The payment period for land sold for an affordable housing use may exceed 20 years but may not exceed the period of affordability.

C. Market Rate Surplus Land Sales

1. If no City use is identified and there are no bids submitted by a Preferred Entity, Real Estate staff will post a sign on the property notifying the public of the City's intent to surplus the property, post the surplus property on the Real Estate website, advertise the property in a local newspaper for a minimum of two consecutive weekends, post the property on various on-line services, and notify parties which have expressed an interest in acquiring the property.

2. If surplus property is sold or entered into a long term lease (35 years or more) and the new owner proposes to use the property for the development of ten (10) or more residential uses, then the entity (or its successor-in-interest) shall provide no less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental or for-sale property.
 - a. An affordable housing restriction documenting the 15% of the total number of units constructed shall be provided to be affordable for ownership housing to a household earning no more than 100% of the Area Median Income (AMI), but can be sold to a household earning up to 120% of the AMI; or at an affordable rent, for a household at 60% of the AMI. The affordable housing restriction shall be recorded at the time of transfer or the execution of the long-term lease. Ownership restrictions shall include an equity sharing agreement that requires the owner to share future appreciation with the City. The amount attributed to the City shall be the difference between the market price and the affordable price.
3. If surplus property is sold for a use other than residential development, an affordable housing restriction shall be recorded as described above.
4. The affordable housing restriction shall run with the land for fifty-five (55) years and shall be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction. If the property is entered into a long term lease of thirty five (35) or more years the affordable housing restriction shall run for the term of the lease including any extension to the original lease or subsequent lease of the property but not to exceed a total of fifty five (55) years from the date of the original recording of the affordable housing restriction.

D. Exceptions and Exemptions

The following are exceptions to the guidelines provided in Section B and Section C above and are exempt from the Affordable Restriction required under this Policy.

1. If a property is not contiguous to land used for a park, recreation, open-space, or low and moderate income housing purposes; and is not located in an enterprise zone; and is either: (a) less than five thousand (5,000) square feet in size; (b) less than the legal residential lot size in the City; or (c) has no record of access and is less than ten thousand (10,000) square feet in size.
2. If the property is for a high-rise rental development in the downtown and if the developer obtains all necessary approvals from the Planning, Building, and Code Enforcement Department and pulls the projects building permits by June 30, 2021 the property would be exempt from the Affordable Restriction required under this Policy.
3. The Municipal Code allows land to be sold for another public purpose and allows a private sale of property for economic development purposes. If known in advance, staff will notify the Council of its intent to conduct a direct sale in the Annual Report.
4. Staff may request an exemption from this policy to meet another City goal and prioritize the sale of the surplus property for parks, schools, or other reasons, such as economic development. Any exemptions shall be approved by City Council.
 - a. Since this policy is intended to restate Council's previous direction regarding the importance of promoting affordable housing within the City in addition to open space, and the development of educational institutions, Real Estate staff shall

provide a written notification letter to the 'Preferred Entities' of staff's intention of requesting an exemption from the guidelines provided in this policy.

- b. All notices shall be sent by first-class mail and shall include the location and a description of the property and shall be mailed no later than ten (10) days before the Council Meeting.

E. Property that can not be developed with a fair market value of less than Five Hundred Thousand dollars (\$500,000)

1. After completing the actions identified in Section A for 'Determining Whether Property is Surplus to the needs of the City' and receiving a determination from the Director of Economic Development that the property: i) is not needed for or adaptable to City use; ii) is not independently developable; and iii) has a market value of less than \$500,000, the City Manager may declare the subject property surplus, which decision shall include a summary of the basis for all conclusions reached concerning subsections i, ii and iii, immediately above. Such decision shall be posted on the City's website, and staff may proceed with disposition of the surplus property. If the subject property is not determined to be surplus by the City Manager as provided above, any decision to surplus the property must be taken to the City Council for action.

F. Annual Reporting of Surplus Sold Property

1. Real Estate staff shall prepare an informational report of properties declared surplus and properties sold for the City Council on an annual basis. This report is intended, in particular, to highlight for the City Council those properties that staff intends to begin reviewing for the purposes of conducting a surplus analysis, as well as those properties that have been declared surplus and sold without bringing the action to Council during the previous period. The report can also indicate if the property was sold or entered into a long term lease for the purpose of affordable housing.

EXHIBIT A

Process to Determine Whether Property is Surplus to the needs of the City and Subsequent Sale of the Property

- A. **Prepare the File** – Real Estate staff will confirm ownership, prepare various documents related to size and configuration, develop a preliminary estimate of value, and identify any restrictions on use.
- B. **Conduct Internal Review** – Real Estate staff will communicate with internal stakeholders to determine if there is a current or intended future use of the subject property, in order to determine whether the property should be considered “needed for, or adaptable to, City use”.
- C. **Fiscal Analysis by Internal Stakeholders** – If there is an interest expressed by an internal stakeholder, the requesting party conducts a fiscal analysis determining the cost/benefit of retaining the property. During the fiscal analysis Real Estate staff will determine if the property is independently developable and will develop a good faith estimate of the market value of the subject property.
- D. **Retain Property in City Inventory** – If it is determined that there is a bona fide need to keep the property for City purposes, the property is removed from the list of potential surplus properties. If it is determined the property should continue to be considered for surplus sale continue to Step E.
- E. **Inform the City Council of the Results of Steps “A” through “D”, above** – Real Estate staff will prepare an informational memo to the City Council advising them of the results of steps “A” through “D”, above (including identification of all internal stakeholders and outside parties with whom communications were had, and a summary of the basis for all conclusions reached) and, if applicable, staff’s intention to proceed to surplus, market and dispose of the property.
- F. **Response from City Council from Information Memo** – If one or more of the Council responds to the Informational Memo requesting additional information Real Estate staff responds with the requested information. If there are no responses from the Council Real Estate staff proceeds to Step G.
- G. **Initiate the 54222 Process** – If no City use is identified, Real Estate staff prepares the notification letter in accordance with Government Code Section 54220 et seq. and distributes to the current list of open space, educational use, and the Housing Department for distribution to affordable housing agencies (Preferred Entities). The Preferred Entities will have sixty (60) days (notification period) to notify the City of their interest in entering into negotiations for the acquisition of the property. At the conclusion of the sixty (60) day negotiation period, if a Preferred Entity has contacted Real Estate and expressed an interest in acquiring the property proceed to Step H. If no Preferred Entities have contacted Real Estate proceed to Step I.
- H. **Request to Purchase Received from one or more Preferred Entities** – If one or more Preferred Entities request to purchase a potential surplus property Real Estate staff will negotiate in good faith with each entity individually for a minimum of ninety (90) days (negotiation period). At the end of the negotiation period which began at the conclusion of the sixty (60) day notification period (or a total of 150 days) identified in Step G, there are three (3) options

Option One – A single Preferred Entity submitted a bid to purchase the property and the bid reflects the estimated market value of the property. Real Estate staff would continue to Step K.

Option Two – There are more than one bid submitted from Preferred Entities.

- a. If the bids are from multiple Preferred Entities in affordable housing, open space, or educational use, the affordable housing bid is given the priority over the other submitted bidders. Real Estate staff negotiates with each affordable housing bidder until the highest most qualified bidder is determined. The highest most qualified bidder between multiple affordable housing entities is determined by the bidder that proposes the highest price for the property and the greatest number of units at the deepest level of affordability. Once the highest and most qualified bidder is determined continue to Step K.
- b. If the bids are from multiple Preferred Entities which does not include affordable housing, Real Estate staff negotiates with each bidding party until the highest most qualified bidder is determined. Once the highest and most qualified bidder is determined continue to Step K.

Option Three – Staff are unable to reach an agreement with a Preferred Entity. Real Estate staff would continue to Step I.

- I. **Initiate Public Outreach** – If no City use is identified, or there are no bids submitted by a Preferred Entity, or staff and the Preferred Entity are unable to reach an agreement, Real Estate staff will post a sign on the property notifying the public of the City's intent to surplus the property, post the surplus property on the Real Estate website, advertise the property in a local newspaper for a minimum of two consecutive weekends, post the property on various on-line services, and notify parties which have expressed an interest in acquiring the property.
- J. **Complete Public Outreach** – Real Estate staff responds to any inquiries related to the property. If there is an offer proceed to Step K.
- K. **Complete Process** – The transaction would either be with a Preferred Entity or private party and a determination needs to be made whether the property is developable or not. If the property is determined to be undevelopable proceed to Step L. If the property is determined to be developable proceed to Step M.
- L. **Determine if the property is undevelopable** - Based upon the determination by Real Estate staff that the property: i) is not needed for, or adaptable to, City use, ii) is not independently developable, and iii) has a market value of less than \$500,000, the City Manager may adopt the recommendation of the Director of Economic Development and decide to declare the subject property surplus, which decision shall include a summary of the basis for all conclusions reached concerning subsections i, ii and iii, immediately above. Such decision shall be posted on the City's website, whereupon staff may proceed with disposition of the property. Such decision will not be adopted any sooner than fourteen days following the date of the informational memo described in Step "E", above. If the subject property is not deemed surplus by action of the City Manager as provided above, or does not meet the criteria above (ie. the property is developable) any decision to surplus must be taken to City Council for approval.
- M. **Property is developable** –If the property is sold on the open market, the Surplus Sale policy requires that if it is ever used for the development of ten (10) or more

residential uses, then the entity (or its successor-in-interest) must provide not less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental, for-sale, or long term lease (35 years or more) of the property. An affordable housing restriction documenting the total number of restricted units and the affordable prices must be recorded against the surplus land at the time of sale. The restriction is to run with the land for fifty-five (55) years, and be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction.

- N. **Prepare Annual Report of Surplus and Sold Properties** – Real Estate staff will prepare an informational report of properties declared surplus and properties sold for the City Council on an annual basis. This report is intended, in particular, to highlight for the City Council those properties that staff intends to analyze for the surplus process, as well as those properties that have been declared surplus and sold in the prior time period, including those properties that were sold for affordable housing or where a housing restriction was recorded at the time of the transfer.
- O. **Significant or Unusual Properties** – The City Manager may modify the process described above from time to time in order to accommodate circumstances applicable to significant or unusual properties.