

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE April 26, 2016	REVISED DATE 11/29/2022	
APPROVED BY COUNCIL ACTION 04/26/2016, Item 4.1; 11/29/2022, Item 2.8(b), Res. No 80771		

BACKGROUND

In 2019, the California Legislature amended the Surplus Land Act, implementing new requirements for local agencies' sale of surplus land including, but not limited to, requiring written notice of availability, defining with specificity "surplus lands" and expanding the definition of "exempt surplus land." The Surplus Land Act at Cal. Gov. Code § 54220 et seq., as may be amended from time to time, and with accompanying guidelines, may hereinafter be referred to as "SLA."

Municipal Code Chapter 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; (iv) upon Council finding and determination that any such real property is surplus; and/or (v) otherwise upon such terms and conditions as the Council may direct and as otherwise in compliance with the SLA. The purpose of this Policy is to outline a process that is specific to surplus land which conforms to procedure mandated under the updated SLA. .

The most recently approved revisions to Municipal Code Chapter 4.20 focus on replacing the City's procedure for the disposition of real property with the recently expanded procedures of the disposition of real property required under the SLA, as it may be amended from time to time.

PURPOSE

This policy provides additional clarification and is designed to facilitate the process for identifying and disposing of surplus land as provided in the Municipal Code and in the SLA. The policy strengthens the ability for affordable housing developers, among other specified entities, 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 in certain specified circumstances. Finally, the policy restates Council's previous direction regarding the importance of promoting

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affordable housing within the City in addition to open space, and the development of educational institutions, in accordance with the SLA.

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 a memorandum to the City Council advising them of the results of steps "2" 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

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applicable, staff's recommendation to proceed to declare the subject property surplus under the SLA and to subsequently market and dispose of the property. Any real property disposed of through the authority granted to the City Manager under Chapter 4.04 of the Municipal Code that does not require separate Council approval shall not be subject this requirement.

6. If it is determined that there is a bona fide need to keep the property for City purposes, the property shall not be included in the City's list of surplus properties.
7. If no City use is identified and Real Estate staff determines that the subject property should be declared surplus real property, staff shall follow the formal disposition process mandated by the SLA and the internal process as described in Exhibit A.

B. Reporting of Surplus Sold Property

Real Estate staff shall coordinate with the Department of Finance to create and maintain a list of properties that are declared surplus to the needs of the City and shall submit the list to the California Department of Housing and Community Development (HCD), as required by the SLA.

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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 a memorandum 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 recommendation of a declaration of surplus under the SLA and to subsequently dispose of the property. Any real property disposed of through the authority granted to the City Manager under Chapter 4.04 of the Municipal Code which does not require separate Council approval shall not be subject this requirement.
- F. **Proceed with the SLA Disposition Process** - If no City use is identified, Real Estate staff shall commence the disposition process prescribed in the SLA which includes, generally and as of the time of the adoption of this policy, the following:
- providing a notice of availability of the property to certain specified entities;
 - exemptions classifying "exempt surplus land" under certain specified conditions;
 - procedures for the negotiation and the final disposition of the property;

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- specific affordable housing minimum requirements;
- certain deed restrictions on the future use of the property; and
- other specified procedures and requirements.

G. **Prepare Report of Surplus and Sold Properties** - Real Estate staff shall coordinate with the Department of Finance to create and maintain a list of properties that are declared surplus to the needs of the City and shall submit this list to the HCD, as required by the SLA.

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, so long as the modifications do not conflict with Chapter 4.20 of the San José Municipal Code and the SLA.