



May 31, 2016

Community and Economic Development Committee
1 Frank Ogawa Plaza
Oakland, CA 94612

Dear Council President Gibson McElhaney and Councilmembers Campbell Washington, Kaplan, and Reid:

As a member of the Public Lands Working Group of the Mayor's Housing Cabinet, I am writing to comment on the proposed public lands policy before you on May 31, 2016. EBHO is gratified to see that a comprehensive policy for City-owned land is under consideration and includes affordable housing as a goal, as outlined in the recommendations from *Oakland at Home*. This is a significant step forward, affirming that the City prioritizes using all available assets and tools to address our dire need for permanently affordable homes. However, this letter outlines some suggestions for improvements.

While it is crucial that this process continue to move forward quickly, this policy is of such importance that we urge that a wide range of stakeholders be consulted before an ordinance is further developed and finalized. While we appreciate that the Public Lands Group had a chance to review and comment on the staff report, we had relatively little notice that an informational item was coming forward. The general public had even less time to absorb the staff report, which was published late Thursday before a Tuesday meeting following a holiday weekend.

In our current environment of limited resources, public land is a scarce and valuable asset that should be leveraged for community benefits. To further this principle, we support the related recommendations to prepare a Real Estate Asset Management Plan, explore a framework for leasing City-owned space for not-for-profit and cultural arts uses, and placing a City Charter amendment on the ballot to extend the maximum lease period for City property to 99 years.

We also emphasize the importance of the staff report's commitment to explore "public action" as a means of recapturing value for the public. When the City takes significant action such as rezoning or investing in infrastructure, an appraisal should determine the change in value and all or part of that incremental value should then be transferred to the Affordable Housing Trust Fund or otherwise captured as community benefits attached to the project. We are eager to continue this discussion, especially since the City has limited large public parcels in its portfolio and may actually hold more power in its ability to set the conditions for use and entitlements on private land.

However, since the recommendations of the Work Group reflected in the staff report do reflect some compromise, we urge the Council to consider several ways to strengthen this crucial policy.

EBHO appreciated the thorough discussion in the Work Group but we reiterate our position that the State Surplus Lands Act should be a *baseline* for any City policy, regardless of whether the land in question is formally determined as “surplus.” Our recommendations below move in that direction and establish a stronger and clearer priority for building and/or funding affordable homes through the use of City-owned land.

- **The final ordinance should clearly reference and affirm the process and standards set forth in the Surplus Lands Act for all sales of City-owned real property.** While Section II of the ordinance acknowledges that the City is subject to the Surplus Lands Act, it should set forth a clearer description of how the City will comply with the spirit and the letter of the Act. We are glad to see that the City’s NOFA list of affordable housing developers will be used to give notice to affordable housing sponsors when soliciting proposals for sites that the City determines are suitable for affordable housing. This proactive noticing should be standard procedure for any disposition of City-owned land.
- **Provide a legal basis for the distinction between “property for development” and “surplus property.”** We are concerned that Section IV of the ordinance (“Sale of City-Owned Real Property for Development”) is explicitly exempted from the provisions of Section II and that the City continues to claim a distinction between disposition of “property for development” and disposition of “surplus property.” The Surplus Land Act covers all dispositions (by sale, lease or otherwise) of public land that is no longer needed for use by the public agency. If the City is disposing of City-owned land for development by a private entity, then the land by definition is “no longer necessary for the [public] agency’s use” and must be considered to be surplus land.
- **We appreciate the City’s efforts to provide criteria for determining the suitability of property for development of affordable housing, but to ensure compliance with the Surplus Land Act,** the criteria in section 2.42.170B may need to be made more specific to ensure that a thorough evaluation takes place and that 100% affordable housing is the starting point and preference on land that suitable for multi-family residential development. However, even if the City’s preliminary analysis suggests that a site is not suitable for development of affordable housing, it should still follow the procedures in the Surplus Land Act.
- **In any RFP process, the City should give priority to those proposals that provide the greatest number of affordable units at the deepest levels of affordability.** Establishing a 15% minimum affordability level for development of multi-family housing on city land is a step forward but could go further. While the revised ordinance (in section 2.42.040) notes the requirements of the Surplus Land Act process to first seek proposals where at least twenty-five (25%) of the units are affordable, we urge this prioritization of higher levels of affordability for *all* City-owned land, not just land the City designates as “surplus” (especially since that definition has been a point of contention in the past).

Without a priority for higher affordability levels, it is likely that developments will end up providing only the minimum level required by the City. Again, while this is a step forward, it is not enough to satisfy the need for affordable homes or move significantly towards meeting Oakland's RHNA requirements. A clear priority for higher levels of affordability (at least 25%, to mirror the Surplus Land Act's disposition process) should be incorporated in the process outlined in 2.42.170 B.

- **Further explore and refine the income targeting requirements in Section 2.42.190 to ensure that very-low-income and extremely-low-income units will be included in developments.** The current proposed inclusionary requirement that 15% of all units be affordable at an average level of 80% of median income is a step forward but could go further. The target of an "average" of 80% AMI, which was determined as the most feasible route for financing, concerns some of our members. While an average target does allow for flexibility, we are concerned that this will privilege the development of moderate-income units (even if those are balanced out by the inclusion of units well below 80% AMI). We urge that the Council look closely at this requirement and consult with stakeholders about a target or average that would be more likely to guarantee units at the very-low-income level (50% AMI or below). At a minimum, requirements for an "average affordability" must be above and beyond the requirements of the Surplus Lands Act. The Act states that if a property is disposed of to an entity that develops the site for residential uses, at least 15% of units must be affordable to lower income households.
- **Set clearer limits on the ability to waive the affordability requirements.** This proposed policy reflects many hours of work and consideration by both City staff and stakeholders on the Public Lands Work Group, and a waiver of these requirements should be a rare and thoroughly analyzed occurrence. We are concerned about the language at 2.42.190 B in Attachment A that the "City Administrator may recommend, and Council may consider, a full or partial waiver of these affordable housing requirements if there is a finding and determination that the requirements would render the project infeasible, or that the project will provide an equivalent or greater value of other community benefits...." While we understand the intent to provide some flexibility in this long-term policy, the very fact that this is a long-term policy requires very specific and clear criteria for making such a determination of infeasibility. We would not want this clause to function as a loophole to skirt the intention of this policy to prioritize affordable housing on City-owned land.

We are confident that a strong public lands policy could be effective in generating affordable housing on appropriate sites. As an example, the staff report includes a set of sites in the Coliseum City area in the list of sites soon to be offered for development. EBHO members are particularly concerned about affordable housing opportunities in that neighborhood, especially since Oaklanders in the surrounding areas are at high risk of continued displacement. So as a sample, we have attached some preliminary information about two possible development

scenarios on one of the Coliseum area sites, demonstrating how affordable housing could be integrated into that neighborhood and how a clear public lands policy will facilitate this goal.

In conclusion, the City's publicly-owned land is a scarce and valuable resource – opportunities to develop this land or capture its value must be weighed seriously. We are glad to have been a stakeholder in this discussion, and urge the inclusion of broader community voices in the further development of this proposal to ensure full buy-in and the most effective policy possible. While the staff recommendation is a step in the right direction, we urge Council to make this important policy even stronger and add one more tool to address the housing crisis.

Sincerely,



Gloria Bruce

Executive Director, East Bay Housing Organizations

Cc: Mayor Libby Schaaf
Assistant City Administrator Claudia Cappio
Mark Sawicki, Director of Economic and Workforce Development
Michele Byrd, Director of Housing and Community Development
Councilmember Dan Kalb
Councilmember Abel Guillen
Councilmember Annie Campbell Washington

Attachment A: Coliseum City Scenarios