

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Cristina Peña SBN 280762 / Rebekah Evanson SBN 207825 Bay Area Legal Aid 4 North Second Street, Suite 600 San Jose, CA 95113 TELEPHONE NO.: (510) 487-3700 FAX NO.: (408) 487-3750 ATTORNEY FOR (Name): Plaintiffs/Petitioners		FOR COURT USE ONLY  <div style="font-size: 2em; opacity: 0.5; margin: 10px 0;">EMPLOYED</div> <div style="font-size: 1.5em; margin: 10px 0;">2016 JUL 21 P 2:05</div> <div style="font-size: 1.2em; margin: 10px 0;">Sharon Ulleseth</div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Santa Clara STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, CA 95113 BRANCH NAME: Downtown Superior Court		CASE NUMBER: <b>I 6 CV 297950</b>  JUDGE:  DEPT:	
CASE NAME: Anderson, et al. v. City of San Jose, San Jose City Council, Does 1-50			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties<br>b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve<br>c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses<br>e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court<br>f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|

3. Remedies sought (check all that apply): a. ☐ monetary    b. ☒ nonmonetary; declaratory or injunctive relief    c. ☐ punitive

4. Number of causes of action (specify): 4

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 21, 2016  
 Cristina Peña

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

#### NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

# SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

CITY OF SAN JOSÉ, a governmental entity, SAN JOSÉ CITY COUNCIL, and DOES 1-50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SARAH ANDERSON, JOANA CRUZ, URBAN HABITAT PROGRAM, and HOUSING CALIFORNIA

2016 JUL 21 P 2:05

Sharon Ulleselt

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): The Superior Court of California

County of Santa Clara, Downtown Superior Court

191 North First Street, San Jose, CA 95113

CASE NUMBER:  
(Número del caso)

16CV297950

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Cristina Peña SBN 280762 / Rebekah Evanson SBN 207825

DATE:

(Fecha) JUL 21 2016

DAVID H. YAMASAKI

Chief Executive Officer, Clerk

Clerk, by

(Secretario)

Sharon Ulleselt

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): CITY OF SAN JOSÉ and SAN JOSÉ CITY COUNCIL

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☒ other (specify): CCP 416.50 (public entity)

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

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16 THE SUPERIOR COURT OF CALIFORNIA

17 COUNTY OF SANTA CLARA

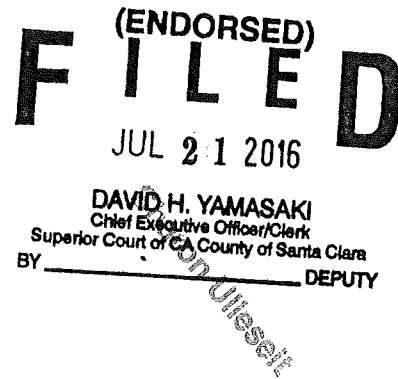
18 SARAH ANDERSON, JOANA CRUZ,  
19 URBAN HABITAT PROGRAM, and  
20 HOUSING CALIFORNIA,  
21 Petitioners and Plaintiffs,  
22 vs.

23 CITY OF SAN JOSÉ, a governmental entity,  
24 SAN JOSÉ CITY COUNCIL, and DOES 1-50  
25 inclusive,  
26 Respondents and Defendants.

Case No.: 16CV297950

Verified Petition for Writ of Mandate and  
Complaint for Declaratory and Injunctive  
Relief

(C.C.P. §§ 526, 526a, 1060, 1085)



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## I. INTRODUCTION

1. This action challenges the City of San José's ("the City") enactment of a policy for disposing of surplus land that violates the California Surplus Land Act ("Act"), undercutting the state law's mandate to make public land available for affordable housing in the City and causing a disproportionately adverse effect based on race and ethnicity, disability, sex, and familial status.

2. The California Surplus Land Act requires local governments to prioritize development of affordable housing on surplus city-owned properties. Gov. Code<sup>1</sup> § 54220(a). On April 26, 2016, the San Jose City Council enacted a resolution declaring that "the City is not required to follow" the Act, and adopted a policy ("Policy 7-13" or "the City Policy") that permits and requires San José to dispose of surplus City-owned land in a manner that is contrary to the express mandates of the Act, and that will reduce the availability of affordable housing. True and correct copies of the City Policy and the Resolution are attached to this Petition and Complaint as Attachments 1 and 2, respectively, and incorporated herein by this reference.

3. The City's refusal to comply with the Surplus Land Act will cause a reduction in the availability and sites for affordable housing in San José. Reducing the availability of affordable housing will disproportionately harm low-income residents, and in particular, will predictably have a disproportionate negative impact on certain racial and ethnic groups, individuals with disabilities, women, and families with children.

4. The City enacted its illegal policy even as San José, like all of California, faces an extraordinary housing crisis – there are too few homes available for low-income residents. As a result, seventy-eight (78) percent of lower-income renters in California overpay for housing, spending more than thirty (30) percent of their income on rent.<sup>2</sup> This problem is particularly

<sup>1</sup> All citations are to the California Government Code unless otherwise indicated.

<sup>2</sup> California Department of Housing and Community Development: "Highlights of the State of Housing in California: Affordability Worsens, Supply Problems Remain" (2014 Update). Available at [http://www.hcd.ca.gov/housing-policy-development/statewide-housing-plan/web\\_hcd\\_stateofhousing\\_april2014.pdf](http://www.hcd.ca.gov/housing-policy-development/statewide-housing-plan/web_hcd_stateofhousing_april2014.pdf)

1 acute in San José, where ninety (90) percent of renter households earning between \$20,000 and  
2 \$34,999 per year spent more than thirty (30) percent of their income on housing.<sup>3</sup>

3 5. Petitioners and Plaintiffs SARAH ANDERSON and JOANA CRUZ, individuals,  
4 and URBAN HABITAT PROGRAM and HOUSING CALIFORNIA, non-profit organizations,  
5 (collectively “Petitioners”) bring this suit against Respondents and Defendants CITY OF SAN  
6 JOSÉ (“the City”) and SAN JOSÉ CITY COUNCIL (“the City Council”) (collectively  
7 “Respondents”) for violation of California’s Surplus Land Act and fair housing laws, and seek a  
8 Writ of Mandate pursuant to Code of Civil Procedure section 1085 *et seq.*, declaratory relief  
9 pursuant to Code of Civil Procedure section 1060, and injunctive relief pursuant to Code of Civil  
10 Procedure sections 526 and 526a. Among other things, Petitioners seek a declaration that the  
11 Policy is void as inconsistent with state law and a peremptory writ of mandate commanding  
12 Respondents to comply fully with the mandatory duties the Surplus Land Act imposes on the  
13 City’s disposition of surplus land, including, but not limited to, the duties under sections 54222,  
14 54227, 54222.5, and 54233.

## 15 **II. THE PARTIES**

### 16 **Petitioners/Plaintiffs**

17 6. Petitioner SARAH ANDERSON is a longtime San José resident who became  
18 homeless as a result of domestic violence in June 2015. She is a veteran and has two minor  
19 children, ages 13 and 9. Petitioner ANDERSON has struggled to find housing she can afford in  
20 San José and cannot leave the Bay Area counties because she must comply with custody and  
21 visitation orders for her children that require her to remain here. She currently lives in an  
22 overcrowded apartment in San José and pays more than half of her income on her housing costs.  
23 Petitioner ANDERSON and her family are considered a “very-low-income” household according  
24 to the Department of Housing and Urban Development’s (“HUD”) definition, earning less than  
25 fifty (50) percent of the area median income (AMI).

26  
27 <sup>3</sup> San José Apartment Rental Ordinance Study: Final Report (April 2016) at pg. 37-8 *citing* Economic Roundtable  
28 Analysis; U.S. Census Bureau, 2009-2013 5-Year American Community Survey, Table B25106.

1           7.       Petitioner JOANA CRUZ is a longtime San José resident who lives in an  
2 overcrowded two-bedroom apartment that she shares with her husband, two teenage children,  
3 and brother-in-law. She is currently paying almost fifty (50) percent of her income on her  
4 housing costs. Prior to February 2016, Petitioner CRUZ had lived for twenty (20) years in a  
5 rental home which, despite numerous code violations that threatened her family's health and  
6 safety, had nonetheless been her best available option until the rent was increased by \$700 per  
7 month. Petitioner CRUZ and her family meet the HUD definition of an "extremely-low-income"  
8 household, earning less than thirty (30) percent of AMI.

9           8.       Petitioners ANDERSON and CRUZ and other low-income residents of San José  
10 are at increased risk of homelessness due to the City's noncompliance with the Act's  
11 requirements to prioritize development of affordable housing.

12           9.       Petitioner URBAN HABITAT PROGRAM is a non-profit organization that  
13 works to advance equitable policies to create a just and connected Bay Area for low-income  
14 communities and communities of color, including policies to create and preserve affordable  
15 housing and to protect low-income residents from economic displacement. To achieve this goal,  
16 it focuses on policy advocacy, providing technical assistance to grassroots organizations, and  
17 building capacity and developing leadership skills of residents in low-income communities  
18 throughout the Bay Area. The organization regularly convenes and works in coalitions to  
19 advocate for affordable housing, equitable development, and transportation issues in San José,  
20 elsewhere in Silicon Valley, and throughout the Bay Area. It also manages a program that  
21 provides people from low-income communities with leadership development as social justice  
22 advocates through a six-month fellowship that trains and prepares them to sit on public boards  
23 and commissions throughout the Bay Area.

24           10.      Petitioner HOUSING CALIFORNIA is a statewide nonprofit organization  
25 dedicated to decreasing homelessness and increasing the supply of safe, stable, and permanently  
26 affordable housing throughout California. Its members include nonprofit housing developers,  
27 local governments, community finance institutions, and housing advocacy groups, as well as  
28 individuals. These members play a critical role in advocating for and producing affordable

housing. Some of its member organizations are engaged in affordable housing advocacy and development in and around San José and the greater Bay Area, including use of the Surplus Land Act. HOUSING CALIFORNIA staff and members worked to support Assembly Bill 2135 (2014), which amended the Act to require, *inter alia*, a minimum percentage of affordable housing be developed on surplus land. In addition, HOUSING CALIFORNIA has provided training to local governments in the Bay Area about using the Surplus Land Act to help facilitate affordable housing development. HOUSING CALIFORNIA also engages in advocacy on economic and racial integration through its work promoting inclusionary zoning. In addition, HOUSING CALIFORNIA receives funding to monitor fair housing efforts as the state engages in its first Assessment of Fair Housing. In support of its mission, HOUSING CALIFORNIA organizes the largest affordable housing conference in the country emphasizing education and advocacy on the laws and policies facilitating affordable housing, fair housing, and tenant rights.

11. Petitioners URBAN HABITAT PROGRAM and HOUSING CALIFORNIA have organizational interests in increasing, and engage regularly in advocacy to increase, the supply of housing affordable to lower-income households at the local and regional levels, and (in the case of HOUSING CALIFORNIA) statewide.

#### **Respondents/Defendants**

12. Respondent CITY OF SAN JOSÉ is a charter city and municipal corporation formed and existing under the laws of the State of California, of which it is a political subdivision.

13. Respondent SAN JOSÉ CITY COUNCIL is the legislative body of the City and is responsible for carrying out the Constitution and laws of the State of California, and conforming the ordinances, regulations, policies and actions of the City to the requirements of state law.

14. Does 1-50 are persons or entities whose identities or relationship to this action are currently unknown to Petitioners. When their identities are ascertained, Petitioners may amend this petition and complaint by inserting their true names and relationships herein.



1                                   **III. JURISDICTION AND VENUE**

2           15.     This Court has jurisdiction over this matter pursuant to Code of Civil Procedure  
3 sections 526, 526a, 1060, and 1085.

4           16.     The issuance of a writ is appropriate because there is not a plain, speedy, and  
5 adequate remedy in the ordinary course of law.

6           17.     Venue in Santa Clara County is proper under Code of Civil Procedure section  
7 394.

8                                   **IV. STATUTORY FRAMEWORK**

9                   **California Surplus Land Act**

10          18.     The California Surplus Land Act requires local agencies, including all charter  
11 cities, to prioritize affordable housing, parks and open space when disposing of surplus land by  
12 first offering qualifying surplus land for sale or lease to entities which will use the site for  
13 affordable housing, parks or open space (or in certain cases enterprise zone or infill/transit zone  
14 uses). *See generally* §§ 54220 *et seq.* Surplus land refers to properties owned by a local agency  
15 that it no longer needs. *See* § 54221(b). The Act requires the prioritization for affordable  
16 housing of all surplus land with the sole exception of land zoned for, or already being used for,  
17 park or recreational purposes that will be maintained for those uses. § 54227.

18          19.     The Act declares that “there is a shortage of sites available for housing for persons  
19 and families of low and moderate income” and that “surplus government land, prior to  
20 disposition, should be made available for [affordable housing].” § 54220(a). The Act accordingly  
21 requires that prior to disposing of surplus land, a local agency must send a written offer to sell or  
22 lease the land to other local public agencies and to affordable housing developers that have  
23 requested notice. § 54222(a).

24          20.     In 2014, the Legislature amended the Act to further prioritize affordable housing.  
25 Assembly Bill No. 2135, 2014 Cal. Stat., ch. 677 (effective Jan. 1, 2015). The legislation  
26 requires that when considering offers to purchase or lease surplus land, the local agency must  
27 give first priority to and enter into good faith negotiations with an interested entity that proposes  
28 to make at least twenty-five (25) percent of the total number of units developed on the parcel

1 affordable to lower-income households. § 54222.5. The twenty-five (25) percent affordability  
2 requirement applies to both sales and rentals. *Id.* The Act requires that ownership units be  
3 affordable to lower-income households earning less than seventy (70) percent of AMI and sold to  
4 lower-income households earning less than eighty (80) percent of AMI. § 54222.5 and Health  
5 and Safety Code §§ 50052.5(3). In the event that more than one entity meets this standard, the  
6 local agency shall give priority to the one that proposes to provide the greatest number of  
7 affordable units at the deepest level of affordability (i.e., affordable to households at the lowest  
8 income levels). § 54227(a).

9         21. When an affordable housing developer notifies the local agency that it is  
10 interested in purchasing or leasing the surplus land, the local agency is obligated to enter into  
11 good faith negotiations for a period of ninety (90) days. § 54223. If the price or terms cannot be  
12 agreed upon after the good faith negotiation period, the land may be disposed of to a different  
13 entity, but the 2014 amendments to the Act require that if an entity develops ten or more  
14 residential units, at least fifteen (15) percent of the units must be affordable to lower-income  
15 households. § 54233.

16         **Government Code section 65008**

17         22. California Government Code section 65008 prohibits local government agencies,  
18 including cities and counties, from taking actions, including in the administration of ordinances,  
19 which prohibit or discriminate against any residential development or shelter because the  
20 development is intended for occupancy by “person or families of very low, low, moderate, or  
21 middle income.” § 65008(b)(1)(C).

22         **California Fair Employment and Housing Act**

23         23. The California Fair Employment and Housing Act (“FEHA”) prohibits cities from  
24 discriminating through public land-use practices, decisions, and authorizations on the basis of  
25 race, color, national origin, sex, gender, familial status, disability, sexual orientation, marital  
26 status, ancestry, source of income, and religion. § 12900 *et seq.*

## **V. FACTUAL ALLEGATIONS**

24. San José lawmakers have long known of the dearth of affordable housing available for the City's low-income residents. As early as 2010, the City passed an inclusionary housing ordinance that acknowledged the need for housing affordable to very-low- and low-income households. *See* San José Ordinance No. 28689. Particularly hard-hit by the affordable housing crisis are people who are members of certain racial and ethnic groups, people with disabilities, women, and families with children. The City explicitly acknowledges the disparate impact of the affordable housing crisis in its most recent Housing Element, adopted by the City Council on January 27, 2015, but nevertheless enacted City Policy 7-13, which will reduce the construction of new housing affordable to lower-income households in San José.

### **San José City Policy No. 7-13**

25. On April 26, 2016, the San José City Council adopted City Policy 7-13, by passing Resolution Number 77725. Attachment 2. City Council Resolution No. 77725 declares that "the City is not required to follow" the Surplus Land Act. *See* Attachment 2. City Policy 7-13 sets forth procedures for disposing of surplus City lands in a manner inconsistent with the Act. As alleged below, the staff report accompanying Policy 7-13 enumerates a number of ways in which the Policy is inconsistent with the requirements of the Act and purports to give the City discretion to not prioritize affordable housing when disposing of surplus land. A true and correct copy of this staff report is attached to this Petition and Complaint as Attachment 3, and incorporated herein by this reference.

26. On April 21, 2016, Petitioners Anderson and Urban Habitat Program through their attorneys sent a letter to the City stating that the proposed City Policy would be illegal. A true and correct copy of the letter from Bay Area Legal Aid to the Office of City Attorney, sent April 21, 2016, is attached to this Petition and Complaint as Attachment 4, and incorporated herein by this reference. On April 22, 2016, the San José City Attorney replied, reiterating the City's position that the City "is not required to follow the requirements of the Surplus Land Act" and contending that the Act is "inapplicable" to it because San José is a charter city. A true and correct copy of the letter from the Office of City Attorney to Bay Area Legal Aid, received April

22, 2016, is attached to this Petition and Complaint as Attachment 5, and incorporated herein by this reference.

**San José's Policy 7-13 Unlawfully Conflicts with the Surplus Land Act.**

27. The City Policy materially and explicitly conflicts with the Act in at least four ways:

- a. It exempts downtown high rise rental developments on surplus land from the Act's affordable housing restrictions. *See* Attachment 1, Exhibit A, section D(2). The Act allows no such exemption.
- b. It allows City staff to "request an exemption" from affordable housing requirements "to meet another City goal...such as economic development" and permits the City Manager to modify the process for determining whether property is surplus "to accommodate circumstances applicable to significant or unusual properties." *See* Attachment 1, section D(4); Exhibit A, section O. The Act does not permit the City to craft its own exemptions from the Act's mandates.
- c. It allows the affordable for-sale units developed by preferred entities on surplus land be affordable to and sold to moderate-income households. *See* Attachment 1, section B (3). The Act, in contrast, requires that these for-sale units be affordable for lower-income households. § 54222.5.
- d. It allows the affordable for-sale units in mixed-income development on surplus land to be affordable to and sold to moderate-income households up to one hundred twenty (120) percent of AMI. *See* Attachment 1, section C(2)(a). In contrast, the Act requires that units be affordable to households making less than seventy (70) percent of AMI and sold to households making less than eighty (80) percent of AMI. § 54233 and Cal. Health and Safety Code §§ 50052.5(3). The median household income for the San José area is \$107,100 per year. A true and correct copy of HUD's FY 2016 Income Limits Summary for the San José-Sunnyvale-Santa Clara, CA HUD Metro FMR Area is

1 attached to this Petition and Complaint as Attachment 6, and incorporated  
2 herein by this reference.

3 28. Resolution No. 77725 acknowledges that Policy 7-13 is not consistent with the  
4 Act. The Resolution states that the Policy is only “generally consistent.” For example, as noted  
5 in ¶27, section d, the Act specifically prioritizes development of housing affordable for low-  
6 income households (currently in San José, those making less than \$79,250 for a family of four<sup>4</sup>).  
7 In contrast, City Policy 7-13 prioritizes development of housing affordable to moderate-income  
8 households (currently, those earning up to approximately \$128,500<sup>5</sup>). The City Policy therefore  
9 misclassifies as “affordable” a unit that would be too expensive for low-income families. This,  
10 in turn, will reduce the amount of housing that could be developed for truly low-income  
11 households in San José.

12 **The City Policy Has a Disproportionate and Adverse Impact on Certain Racial and**  
13 **Ethnic Groups, People with Disabilities, Women, and Families with Children.**

14 29. Low-income and very-low-income households in need of affordable housing in  
15 San José are disproportionately members of certain racial and ethnic groups, people with  
16 disabilities, women, and families with children (“protected classes”). By authorizing the City to  
17 act contrary to the Act’s requirement to prioritize the development of affordable housing, the  
18 Policy disproportionately denies members of these protected classes housing opportunities that  
19 the Act requires the City to make available to them.

20 30. California has a dire shortage of affordable housing and housing costs in San José  
21 are particularly high. The San Jose/Sunnyvale/Santa Clara Metro area is the third most  
22 expensive housing market in the country. Rents and home prices have increased steadily, and a  
23 household would require an annual income of over \$110,000 to afford a 2-bedroom/2-bathroom  
24 apartment at \$2,700 a month.

25 31. San José, like other local governments, is required to quantify the need for  
26 affordable housing every eight years under the state’s Housing Element Law. § 65580 *et seq.*

27 <sup>4</sup> *Id.*

28 <sup>5</sup> *Id.*

1 During the City's past Housing Element planning period (2007-2013), there were 2,812 units  
2 affordable to lower-income households built in the City, while there was a need for 13,073 units  
3 for lower-income households. Despite this incredible need, the City only met twenty-one (21)  
4 percent of the demand for lower-income housing. The data demonstrates that actual production  
5 of affordable housing lags far behind the need. For the current Housing Element planning  
6 period (2014-2022), San Jose's lower-income housing need is 14,661 units.

7 32. The City's Housing Element, relying on Census data, demonstrates that San José  
8 has a dramatic wealth disparity that disproportionally affects protected classes. City-wide, 16.6  
9 percent of Blacks and 20.9 percent of Hispanics live in poverty, compared to 12.6 percent of all  
10 people in San José. From 2000 to 2010, household incomes decreased overall by 13.4 percent,  
11 but during the same time period, household income decreased by 28.2 percent for Blacks and  
12 27.8 percent for Hispanics. Further, people with disabilities in San José also have severely  
13 limited income. Thirty-seven (37) percent of people with disabilities earn less than \$15,000 a  
14 year, as compared to twenty-two (22) percent of those without disabilities.

15 33. Families with children and female-headed households are also in great need of  
16 affordable housing. Just over eight (8) percent of families in the City live in poverty, while over  
17 eleven (11) percent of all families with children and almost a third (27.9 percent) of female-  
18 headed households with children live in poverty. Among renters in San José, 19,340 families  
19 with children earn less than eighty (80) percent of AMI, and of these over forty (44) percent  
20 (8,535 households) earn less than thirty (30) percent of AMI. Among homeowners, 6,980  
21 households with children earn less than eighty (80) percent of AMI. This is compared to City  
22 households overall, where 15,755 renter households earn less than one hundred (100) percent of  
23 AMI and 4,550 homeowner households earn less than one hundred (100) percent of AMI.

24 34. The housing cost burden on lower-income households is extreme. The City-  
25 initiated Apartment Rent Ordinance Study,<sup>6</sup> published prior to the adoption of City Policy 7-13,

26  
27 <sup>6</sup> In connection with an apartment rent ordinance, the City Council directed the City's Housing Department to gather  
28 demographic information of San José renters called the "Study of the Apartment Rent Ordinance of the City of San  
José". Available at <http://www.sanjoseca.gov/DocumentCenter/View/55649>.

1 found that across all City Council districts between eighty (80) to ninety-six (96) percent of  
2 households earning less than \$35,000 a year are rent burdened, or paying more than thirty (30)  
3 percent of their income on housing costs. The City's Housing Element states that forty-four (44)  
4 percent of all households are overpaying rent, compared to fifty-nine (59) percent of lower-  
5 income households. Further, a severe housing cost burden is defined as paying more than fifty  
6 (50) percent of a household's income on housing costs. Hispanics and Blacks have a  
7 disproportionally high housing cost burden when compared with the jurisdiction as a whole.  
8 The City's Consolidated Plan states that nearly thirty (30) percent of Hispanics and over twenty-  
9 three (23) percent of Blacks have a severe housing cost burden compared to twenty (20) percent  
10 of the jurisdiction as a whole.

## 11 **VI. CAUSES OF ACTION**

### 12 **First Cause of Action**

#### 13 **Unlawful Conflict with State Law (Preemption) (Cal. Const. art. XI, § 7).**

#### 14 **All Petitioners Against All Respondents Writ of Mandate (Civ. Proc. Code § 1085)**

15 35. Petitioners incorporate by reference herein each and every allegation contained in  
16 the previous paragraphs.

17 36. At all times relevant to this action, Respondents have had clear, mandatory duties  
18 and prohibitions imposed by the Act. §§ 54220 *et seq.* Those mandatory duties include disposing  
19 of surplus city-owned land in accordance with the Surplus Land Act, and administering the  
20 disposition of surplus city-owned land in accordance with policies and practices that are not  
21 inconsistent with any of the Act's requirements.

22 37. Respondents have failed to comply with those mandatory duties and have  
23 publically declared their willful violation of the Act. They adopted City Policy 7-13 that, on its  
24 face, conflicts with the Surplus Land Act. Attachment 1. The resolution adopting City Policy 7-  
25 13 eliminates any doubt about the City's defiance of state law and creates the controversy at  
26 issue by declaring that "the City is not required to follow" the Act. Attachment 2.

27 38. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of  
28 law.

1           39.     Petitioners are beneficially interested in having Respondents comply with all  
2 applicable provisions of law and their legal duties, as set forth herein.

3           40.     Wherefore Petitioners pray for relief, as set forth below.

4                               **Second Cause of Action**

5                               **Declaratory Relief (Cal. Civ. Proc. Code § 1060)**

6                               **All Petitioners Against All Respondents**

7           41.     Petitioners incorporate by reference herein each and every allegation contained in  
8 the previous paragraphs.

9           42.     An actual controversy exists between Petitioners and Respondents over the  
10 validity of the City Policy and Respondent's duties under the Surplus Land Act. Specifically,  
11 Petitioners contend that the City must comply with the Surplus Land Act, including, but not  
12 limited to sections 54222, 54227, 54222.5, and 54233, whereas Respondents contend that they  
13 are exempt from these requirements of the Act and have the authority to adopt and follow local  
14 policies in conflict with these and other sections.

15           43.     Respondents' City Policy 7-13 illegally deprives Petitioners of the City's  
16 mandated compliance with the Surplus Land Act's requirements that all surplus land first be  
17 offered for conveyance under the requirements of the Act. The City Policy, thereby, deprives  
18 Petitioners of the maximum surplus sites available for affordable housing required by the Act.

19           44.     Petitioners are beneficially interested in Respondents complying with all  
20 applicable provisions of the Surplus Land Act and their legal duties, as set forth herein.

21           45.     Wherefore, Petitioners pray for relief, as set forth below.

22                               **Third Cause of Action**

23                               **Violation of Cal. Gov. Code § 65008(b)(1)(C)**

24                               **All Petitioners Against All Respondents**

25                               **Writ of Mandate (Civ. Proc. Code § 1085)**

26           46.     Petitioners incorporate by reference herein each and every allegation contained in  
27 the previous paragraphs.

28           47.     At all times relevant to this action, Respondents have had clear, mandatory duties  
and prohibitions imposed by California Government Code section 65008.



1           48.     The acts and omissions of the City alleged herein discriminate against the  
2 development of housing intended for occupancy by persons or households with very-low and  
3 low-incomes in the City of San José.

4           49.     City Policy 7-13 discriminates against residential developments for very-low and  
5 low-income households in direct violation of section 65008(b)(1)(C). The Policy authorizes the  
6 City to refuse to make surplus city-owned land available, as required by the Act, for the  
7 development of affordable housing for lower-income individuals by: 1) exempting downtown  
8 high rise rental developments on surplus land from the Act's affordable housing requirements; 2)  
9 designating units sold to moderate-income households in mixed-income developments on surplus  
10 land as "affordable" even if they are not affordable to low-income households; 3) allowing units  
11 sold to moderate-income households in affordable housing developments on surplus land to  
12 count as "affordable," even though they are not affordable to low-income households; and 4)  
13 granting significant discretion to the City Manager to modify the process for determining  
14 whether property is surplus "to accommodate circumstances applicable to significant or unusual  
15 properties," and allows City staff to "request an exemption from this policy to meet another City  
16 goal...such as economic development." Attachment 1.

17           50.     The City knew, or should have known, that its policy would discriminate against  
18 affordable housing for lower-income households. This discrimination is in direct violation of  
19 section 65008(b)(1)(C).

20           51.     Petitioners are beneficially interested in having Respondents comply with all  
21 applicable provisions of law and their legal duties, as set forth herein.

22           52.     Wherefore Petitioners pray for relief, as set forth below.

23                           **Fourth Cause of Action**

24                           **Violation of Fair Employment and Housing Act**  
25                           **(Cal. Gov. Code § 12900 *et seq.*, Cal. Civ. Proc. Code §§ 526, 526a)**  
26                           **All Petitioners Against All Respondents**

27           53.     Petitioners incorporate by reference herein each and every allegation contained in  
28 the previous paragraphs.

1           54.     At all times relevant to this action, Respondents have had clear, mandatory duties  
2 and prohibitions imposed by California Government Code sections 12900 *et seq.*, California's  
3 Fair Employment and Housing Act.

4           55.     The City's acts and omissions, as alleged, discriminate based on race and  
5 ethnicity, disability, sex, and familial status in that they result in the denial of housing  
6 opportunities available to these protected classes, and in their exclusion from, and/or their  
7 segregation within San José.

8           56.     The City enacted a policy that authorizes it to refuse to make available sites for  
9 affordable housing as required by the Act, acting with knowledge that members of protected  
10 classes are more often low-income and spend a greater percentage of their income on housing  
11 costs and are in greater need of affordable housing. In its Housing Element, the City  
12 acknowledges that its lowest-income communities are disproportionately members of certain  
13 racial and ethnic groups and overpay for their housing costs. Petitioners are informed and  
14 believe, and on that basis allege, that persons and households needing affordable housing in San  
15 José are disproportionately members of certain racial and ethnic groups, individuals with  
16 disabilities, women, and families with children.

17          57.     City Policy 7-13's exemptions and exceptions from the Surplus Land Act also  
18 cause a discriminatory effect. Lower-income households in need of affordable housing in San  
19 José, including those overpaying for housing, are disproportionately members of certain racial and  
20 ethnic groups, individuals with disabilities, women, and families with children, and therefore the  
21 policy predictably causes a disproportionate and adverse impact on members of these protected  
22 classes.

23          58.     Through City Policy 7-13, San José has singled out for non-implementation  
24 elements of state law intended to benefit members of the protected classes. The City Policy  
25 selectively implements the Surplus Land Act to have a disparate effect on protected classes. The  
26 City action has the effect of denying housing opportunities and the enjoyment of residence in the  
27 City to households in these protected classes to a greater degree than other households. These  
28 disparities are statistically significant and did not occur by chance.

1           59.     Petitioners have no plain, speedy, and adequate remedy in the ordinary course of  
2 law.

3           60.     Upon information and belief, Petitioners are harmed by Respondents failure to  
4 comply with all applicable provisions of law and their legal duties, as set forth herein.

5           61.     Wherefore Petitioners pray for relief, as set forth below.

6                                   **VII. PRAYER FOR RELIEF**

7           Wherefore, Petitioners pray for relief as follows:

8           62.     For a declaration that the City is subject to, and must comply with, the Surplus  
9 Land Act in all respects.

10          63.     For a declaration that the City Policy 7-13, and Resolution No. 77725, are illegal  
11 and in conflict with the Surplus Land Act and California Government Code section 65008, and  
12 void, with respect to:

- 13                   a.    The exemption of downtown high rise rental developments (Attachment 1,  
14                       Exhibit A, section D(2)), which violates section 54222 of the Act;
- 15                   b.    Permitting the City to craft its own exemptions “to meet another City  
16                       goal...such as economic development” and permitting the City Manager to  
17                       modify the process for determining whether property is surplus “to  
18                       accommodate circumstances applicable to significant or unusual properties”  
19                       (Attachment 1, section D(4); Exhibit A, section O), which violates sections  
20                       54222 and 54227 of the Act;
- 21                   c.    Defining “affordable” for-sale units developed by preferred entities on surplus  
22                       land as those that are affordable to and sold to moderate income households  
23                       (Attachment 1, section B(3)), which violates section 54222.5 of the Act; and
- 24                   d.    Defining “affordable” for-sale units in mixed-income development on surplus  
25                       land as those that are affordable to and sold to moderate-income households  
26                       up to 120 percent of AMI (Attachment 1, section C(2)(a)), which violates  
27                       section 54233 of the Act.
- 28

1           64.    For a peremptory writ of mandate commanding Respondents to comply fully with  
2 the mandatory duties the Surplus Land Act imposes on the City's disposition of surplus land,  
3 including, but not limited to, the duties under sections 54222, 54227, 54222.5, and 54233.

4           65.    For a peremptory writ of mandate commanding Respondents to vacate and set  
5 aside all policies which fail to recognize the applicability of the Surplus Land Act to the city of  
6 San José.

7           66.    For a peremptory writ of mandate commanding Respondents to cease violating  
8 California Government Code section 65008.

9           67.    For declaratory and injunctive relief commanding Respondents to cease violating  
10 California Government Code sections 12900 *et seq.*

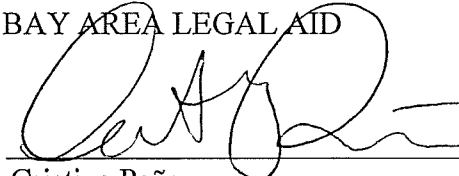
11           68.    For the Court to maintain continuing jurisdiction over this matter until  
12 Respondents have fully complied with the Court's order.

13           69.    An award to Petitioners of reasonable attorney's fees and costs of suit; and

14           70.    Such other and further relief the Court deems just and proper.

15  
16 Dated: July 21, 2016

BAY AREA LEGAL AID



Cristina Peña

**Attorneys for Petitioners and Plaintiffs**

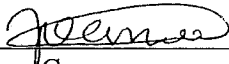
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**VERIFICATION**

I, Joana Cruz, am one of the petitioners in the above-entitled action. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on my behalf, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated in ¶ 7, I verify them to be true, and otherwise, I am informed and believe that all facts herein are true. A faxed copy of this Verification, bearing the faxed signatures of all signatories hereto, may be used for all purposes in lieu of the original. This Verification may be executed by fax or otherwise, being equivalent in legal contemplation of one fully executed original.


I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 20 2016 in San Jose, California.

  
\_\_\_\_\_  
Joana Cruz  
Petitioner and Plaintiff

I, Alma Gonzalez-Martinez, hereby declare under penalty of perjury that I am fluent in both Spanish and English, and have read the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in its entirety to the declarant in Spanish. I have also read the foregoing Verification to the declarant who has who has affirmed to me that its contents are both true and correct.

Executed on July 20 2016 in San Jose, California.

  
\_\_\_\_\_  
Alma Gonzalez-Martinez

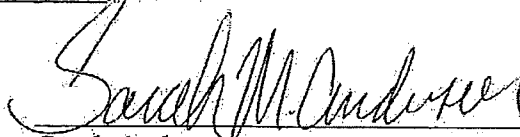
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VERIFICATION

I, Sarah Anderson, am one of the petitioners in the above-entitled action. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on my behalf, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated in ¶ 6, I verify them to be true, and otherwise, I am informed and believe that all facts herein are true. A faxed copy of this Verification, bearing the faxed signatures of all signatories hereto, may be used for all purposes in lieu of the original. This Verification may be executed by fax or otherwise, being equivalent in legal contemplation of one fully executed original.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 21 2016 in San Jose, California.



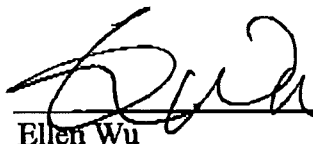
Sarah Anderson  
Petitioner and Plaintiff

**VERIFICATION**

I, Ellen Wu, am the executive director of the Urban Habitat Program, one of the petitioners in the above-entitled action, and am authorized to make this verification on its behalf. I am aware of the nature of the Verified Petition for Writ of Mandate and Complaint for declaratory and injunctive relief being filed on behalf of the Urban Habitat Program, the legal bases for the Petition, and the relief being sought. To the extent that the Petition is based upon facts known to me, including the facts stated in ¶ 9, I verify them to be true, and otherwise, I am informed and believe that all facts herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 20<sup>th</sup> 2016 in Oakland, California.

  
Ellen Wu

Verified Petition for Writ of Mandate and  
Complaint for Declaratory and Injunctive Relief

## **Attachment 1**



## *City of San José, California*

### COUNCIL POLICY

<b>TITLE</b> POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	<b>PAGE</b> 1 of 3	<b>POLICY NUMBER</b> 7-13
<b>EFFECTIVE DATE</b> April 26, 2016	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>	COUNCIL ACTION 4/26/16, Item 4.1	

#### 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

*City of San José, California*

TITLE POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	PAGE  2 of 6	POLICY NUMBER  7-13
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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:

*City of San José, California*

TITLE POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	PAGE	POLICY NUMBER
	3 of 6	7-13

- 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**

*City of San José, California*

TITLE POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	PAGE  4 of 6	POLICY NUMBER  7-13
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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

*City of San José, California*

TITLE	PAGE	POLICY NUMBER
POLICY FOR THE SALE OF SURPLUS PROPERTY WITH PROVISIONS RELATING TO AFFORDABLE HOUSING	5 of 6	7-13

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 often (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 2**

**RESOLUTION NO. 77725**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE UPDATING THE CURRENT PROCEDURE FOR THE DISPOSITION OF SURPLUS CITY-OWNED PROPERTY TO REFLECT THE GENERAL TERMS OF ASSEMBLY BILL 2135**

**WHEREAS**, the City of San José ("City") has an interest in promoting affordable housing within the City; and

**WHEREAS**, as a Charter City the City has plenary power over its municipal affairs and as such City is not required to follow the requirements of AB 2135 which sections modified provisions of Government Code Sections 54220 et seq., pertaining to the sale of surplus real property by a local agency, but has traditionally generally followed that Section; and

**WHEREAS**, changes to California Government Code Section 54220 went into effect on January 1, 2015; and

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**WHEREAS**, the changes to California Government Code Section 54220 increases the ability for affordable housing developers to acquire surplus land, and can be used as an additional tool to support the development of affordable housing that is important for addressing the housing crisis in the area, but the changes also may impact the value of real property to be sold by the City and the impede the City's power to determine the future use of parcels to be sold; and

**WHEREAS**, the City Council desires to update the current procedure for the disposition of surplus City-owned real property to formalize the implementation of surplus sale procedures that generally follow the revised California Government Code Section 54220 as described in the memorandum to the City Council from Kim Walesh, Director

of Economic Development, and Jacky Morales-Ferrand, Director of Housing, dated April 15, 2016;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:**

The procedure for the disposition of surplus City-owned real property, which is attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein, is hereby approved.

ADOPTED this 26th day of April, 2016, by the following vote:

AYES: JONES, KALRA, KHAMIS, M. NGUYEN, T. NGUYEN, ROCHA; LICCARDO.

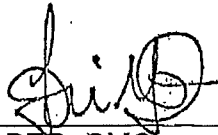
NOES: OLIVERIO.

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ABSENT: CARRASCO, HERRERA, PERALEZ.

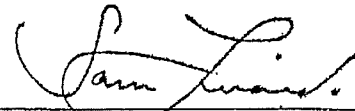
DISQUALIFIED: NONE.

ATTEST:



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TONI J. TABER, CMC  
City Clerk



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SAM LICCARDO  
Mayor

ATTACHMENT<sup>A</sup>

**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 L.

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- 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 3**



# 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



April 15, 2016

Subject: Policy Regarding Sales of Surplus City Property

Page 2

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

- 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.

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.
- Restrictions on use 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

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 WALES  
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	10,454	1
499-26-003	Cheswick Dr, N of btwn McLaughlin Av & Sherlock Dr	Vacant Land	Residential Neighborhood	Single Family Residential	41,818	1
569-46-001	Rebel Wy, N side, btwn Howes Ln & Joseph Ln	Vacant Land	Residential Neighborhood	Single Family Residential	6,478	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	137,636	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	185,668	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	11,631	1
	249-85-102	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	25,260	1
	259-04-018	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
	259-06-066	Guadalupe frontage road	Vacant Land	N/A	Commercial Office	3,215	1
	259-22-082	Coleman at Guadalupe River	Vacant Land	Open Space, Parklands Habitat	Two Family Residential	10,890	1
	259-29-098	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 Carlyle St, NE corner	Vacant Land	Downtown Core	Downtown Core	8,634	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	36,360	1
	264-25-127	Woz Wy	Vacant Land	N/A	Downtown Core	16,563	1
	264-25-128	Woz Wy	Vacant Land	N/A	Downtown Core	14,650	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	23,622	1
	264-42-001	Auceras 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	40,948	1
	472-11-003	Story Rd, N side, W of Remillard Ct	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	235,660	1
	472-11-009	Story Rd, N side, W of Union Pacific Railroad	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	684,973	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	88,862	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	463,914	1
	472-11-081	Story Rd, N of, W of Remillard Ct	Story Road Land Fill	Open Space, Parklands Habitat	Single Family Residential	249,039	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 Dove Hill Rd	Vacant Land	N/A	Agricultural	162,516	1
	676-81-003	Dove Hill Rd, E side, N of Yerba Buena Rd	Vacant Land	N/A	Agricultural	65,778	1
	676-81-005	Dove Hill Rd at Deans Place Wy, SE corner	Vacant Land	Open Space, Parklands Habitat	Agricultural	14,810	1
	678-02-032	Basking Ridge Av	Vacant Land	Open Hillside	Planned Development	1,393,253	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	40,076	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
	678-08-050	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.

## **Attachment 4**



# BAY AREA LEGAL AID

WORKING TOGETHER FOR JUSTICE

Alex R. Golotta  
Executive Director

April 21, 2016

Honorable Mayor Liccardo and Members of the City Council  
City of San José  
200 E. Santa Clara Street, 18<sup>th</sup> Floor  
San Jose, CA 95113

**Re: Demand that the City of San José Comply with the Surplus Land Act**

Dear San José Mayor and City Councilmembers:

We write on behalf of Sarah Anderson and Urban Habitat to request full legal compliance with the California Surplus Land Act and Federal and State fair housing laws in the City Council's proposed Council Policy for the disposition of surplus land. Sarah Anderson is a San José resident who became homeless as a result of domestic violence and who has struggled to obtain affordable housing due to the lack of supply. Urban Habitat is an organization that works to advance equitable policies to create a just and connected Bay Area for low-income communities and communities of color by increasing the power and capacity in these communities.

In particular, we ask that the Council reject or modify the proposed Council Policy included as item #4.1 on the agenda for the April 26<sup>th</sup> City Council meeting prior to adoption to ensure that it fully complies with the state Surplus Land Act and federal and state fair housing laws. The Policy as currently proposed is substantially noncompliant with applicable state law in a number of important ways, which we set forth below.

## **A. The California Surplus Land Act Governs San José's Disposition of Surplus Land**

The California Surplus Land Act (California Government Code §§ 54220 et seq) requires that all cities, including charter cities, prioritize surplus property for affordable housing.<sup>1</sup> To accomplish this mandate, the Act sets forth detailed requirements that all cities must follow when selling or leasing land that is "no longer necessary for the agency's use."<sup>2</sup>

Among the Act's requirements, local agencies must send a written offer to sell or lease the land for developing low- and moderate-income housing to affordable housing developers<sup>3</sup>, give first priority to and enter good faith negotiations with an interested entity that proposes to make at least 25 percent of the total number of units developed on the parcel affordable to lower income households<sup>4</sup>, give priority to an entity that proposes to provide the greatest number of affordable

<sup>1</sup> "As used in this article, the term 'local agency' means every city, whether organized under general law or by charter, county, city and county, and district, including school districts of any kind or class, empowered to acquire and hold real property." Gov. Code § 54221(a).

<sup>2</sup> Gov. Code § 54221(b).

<sup>3</sup> Id. at § 54222.

<sup>4</sup> Id. at §§ 54222, 54222.5, and 54227.

units at the most deeply affordable levels<sup>5</sup>, and ensure that any development with at least 10 units include at least 15 percent of the units as affordable to lower-income households.<sup>6</sup>

### **B. San José's Proposed Council Policy Materially Conflicts with the Surplus Land Act**

The proposed Council Policy on surplus property explicitly and unavoidably contradicts the Surplus Land Act in a number of important ways, including the following:

- The policy exempts high-rise development in the downtown area from any procedural or substantive requirement related to affordable housing “if the developer obtains all necessary approvals ... and pulls the project’s building permits by June 30, 2021.”<sup>7</sup> The Act allows no such exemption.
- The policy allows for-sale units in mixed-income development on surplus land “to be affordable to households with incomes at 100 percent of Area Median Income (AMI), with eligible buyers being households with incomes at or below 120% of AMI.”<sup>8</sup> However, the Act requires that these units be affordable to lower-income households making less than 80% of Area Median Income.<sup>9</sup>
- The policy allows City staff to “request an exemption from this policy to meet another City goal and prioritize the sale of surplus property for parks, schools, or other reasons, such as economic development”<sup>10</sup> and permits the City Manager to modify the process for determining whether property is surplus “to accommodate circumstances applicable to significant or unusual properties.”<sup>11</sup> The Act allows no such discretion.

Adopting and applying a policy with these (or any) exceptions, exemptions, or contradictions to the Act would place the City out of compliance with state law.

### **C. San José's Proposed Policy Violates Federal and State Fair Housing Law**

The City’s failure to adopt a policy that adequately prioritizes affordable housing is also inconsistent with the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968)<sup>12</sup> and the state Fair Employment and Housing Act (Gov. Code §§ 12900 et seq.).<sup>13</sup> Seventy-two percent of San José’s lower-income renter households, who are disproportionately racial and

<sup>5</sup> Id. at § 54227.

<sup>6</sup> Id. at § 54233.

<sup>7</sup> Draft Policy section (D)(2).

<sup>8</sup> Draft Policy section (C)(2).

<sup>9</sup> Gov. Code § 54222.5; *see also* Cal. Health & Saf. Code § 50079.5

<sup>10</sup> Draft Policy section (D)(4).

<sup>11</sup> Draft Policy section (O).

<sup>12</sup> The federal Fair Housing Act prohibits practices that “actually or predictably result[] in a disparate impact on a group of persons or creates, increase, reinforces, or perpetuates segregated housing patterns....” Department of Housing and Urban Development (HUD), 24 CFR Part 100, Implementation of the Fair Housing Act’s Discriminatory Effects Standard; Final Rule, Federal Register, Vol. 78, No. 32, Part IV (Feb. 15, 2013) 11482 (24 CFR 100.500(a)), available at <http://portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>.

<sup>13</sup> California’s Fair Employment and Housing Act (FEHA) makes it “unlawful ... to discriminate through public or private land use practices, decisions, and authorizations” that have “the effect, regardless of intent, of unlawfully discriminating on the basis of [a] protected class.” Gov. Code § 12955.8(b).



ethnic minorities<sup>14</sup>, are housing cost-burdened, paying more than 30 percent of household income for rent.<sup>15</sup> They and other low-income households are in desperate need of affordable housing in San Jose.

Adopting the proposed City Council policy on surplus property disposition with the existing exemptions will reduce the amount of housing that would otherwise be available for lower-income households and therefore likely have a disparate impact on people of color and individuals with disabilities, violating state and federal fair housing laws. Moreover, adopting the policy would likely violate the City's duty to affirmatively further fair housing by perpetuating segregation in the city and reducing housing choice for protected populations.<sup>16</sup>

Finally, in addition to violating the City's legal obligations, the draft policy misses a critical opportunity to support affordable housing through a means which is readily at its disposal. By replacing this unlawful policy with a legally compliant policy that fully prioritizes the use of surplus lands for affordable housing, the City could take an important step towards meeting its most pressing public need using resources already in its possession.

#### **D. Request for Compliance**

We request that the City Council act immediately to ensure that the City of San José is in full compliance with these laws, both in the local policy it adopts and in its implementation of that policy. In particular, the Council should: (1) reject the proposed policy as it currently stands unless it is revised to fully comply with the Surplus Land Act and state and federal fair housing requirements and (2) comply fully with the Surplus Land Act when disposing of any surplus property. If the City adopts a policy in conflict with state and federal law, we may be forced to seek relief in court.

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<sup>14</sup> For example, while just 32 percent of white households are renters, 65 percent of African American households and 60 percent of Hispanic households are renters. U.S. Census Bureau, 2010-2014 American Community Survey 5-Year Estimates, available at [www.factfinder.census.gov](http://www.factfinder.census.gov).

<sup>15</sup> HUD, CHAS Data 2008-2012, available at [https://www.huduser.gov/portal/datasets/cp/CHAS/data\\_querytool\\_chas.html](https://www.huduser.gov/portal/datasets/cp/CHAS/data_querytool_chas.html).

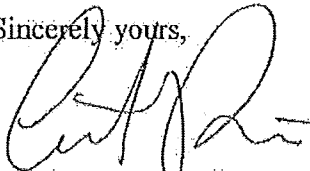
<sup>16</sup> As an entitlement jurisdiction that receives federal housing funds from HUD, the City is required to "affirmatively further fair housing" by "taking meaningful actions ... that ... address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns...." This duty "extends to all of a [city's] activities and programs relating to housing and urban development." HUD, 24 CFR Parts 5, 91, 92 *et al.*, Affirmatively Furthering Fair Housing; Final Rule, Federal Register, Vol. 80, No. 136, Part III (July 16, 2015) 42353 (§ 5.152), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf>.

April 21, 2016

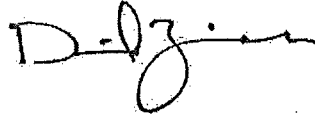
Page 4 of 4

By complying with these legal requirements, the City will also demonstrate responsible stewardship of public land and promote a vision for San José that supports inclusion and diversity. If you have any questions, or wish to discuss further our position in this matter, you can reach us directly at (510) 903-2678. We look forward to the timely resolution of this matter and the avoidance of litigation.

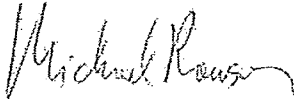
Sincerely yours,



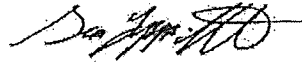
Cristina Peña, Staff Attorney  
Bay Area Legal Aid  
(510) 903-2678



David Zisser, Staff Attorney  
Public Advocates  
(415) 625-8455



Mike Rawson, Director  
Public Interest Law Project  
(510) 891-9794

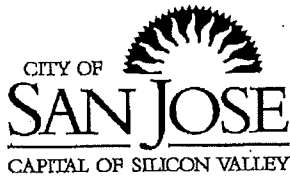


Sam Tepperman-Gelfant, Senior Staff Attorney  
Public Advocates  
(415) 625-8464

Via Email: [mayoremail@sanjoseca.gov](mailto:mayoremail@sanjoseca.gov)  
[District1@sanjoseca.gov](mailto:District1@sanjoseca.gov)  
[District2@sanjoseca.gov](mailto:District2@sanjoseca.gov)  
[District3@sanjoseca.gov](mailto:District3@sanjoseca.gov)  
[District4@sanjoseca.gov](mailto:District4@sanjoseca.gov)  
[District5@sanjoseca.gov](mailto:District5@sanjoseca.gov)  
[pierluigi.oliverio@sanjoseca.gov](mailto:pierluigi.oliverio@sanjoseca.gov)  
[District7@sanjoseca.gov](mailto:District7@sanjoseca.gov)  
[rose.herrera@sanjoseca.gov](mailto:rose.herrera@sanjoseca.gov)  
[District9@sanjoseca.gov](mailto:District9@sanjoseca.gov)  
[District10@sanjoseca.gov](mailto:District10@sanjoseca.gov)

Cc: [Richard.doyle@sanjoseca.gov](mailto:Richard.doyle@sanjoseca.gov)  
[Jacky.morales-ferrand@sanjoseca.gov](mailto:Jacky.morales-ferrand@sanjoseca.gov)  
[Kim.walesh@sanjoseca.gov](mailto:Kim.walesh@sanjoseca.gov)

## **Attachment 5**



*Office of the City Attorney*

RICHARD DOYLE, CITY ATTORNEY

S. SHASTA GREENE  
Senior Deputy City Attorney  
Direct Line: (408) 535-1918

VIA EMAIL  
[CPena@BayLegal.org](mailto:CPena@BayLegal.org)

Cristina Peña, Staff Attorney  
Bay Area Legal Aid  
Santa Clara County Regional Office

Dear Ms. Peña, Mr. Zisser, Mr. Rawson, and Mr. Tepperman-Gelfant:

We received your letter dated April 21, 2016. Thank you for providing your comments and concerns regarding the potential amendment of a City Council Policy regarding the disposition of surplus land. Your letter asserts that the proposed amended policy is out of compliance with the California Surplus Land Act, Government Code Section 54220, *et seq.*, due to exceptions, exemptions or contradictions.

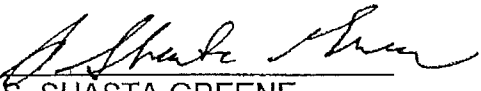
As explained in the staff report for the proposed amended policy, the City of San José is a charter city and under the California constitution has plenary power over its municipal affairs and as such it is not required to follow the requirements of the Surplus Land Act.

Your letter also asserts that the City's failure to adopt a policy that "adequately prioritizes affordable housing" is inconsistent with the federal Fair Housing Act, and the California Fair Housing and Employment Act, Government Code Section 12900, *et seq.*, because the exemptions in the proposed amended policy would reduce the amount of housing that would otherwise be available to for lower income households, and that the policy will have a disparate impact on people of color and individuals with disabilities. Your letter also states that the proposed amended policy would likely violate the City's duty to affirmatively further fair housing by perpetuating segregation in the City and reducing housing choice for affected populations.

All of these assertions are based on a perceived failure to meet an inapplicable standard and thus the standards in the City's policy for the disposition of its own surplus land cannot be viewed as a reduction or exception creating disparate impact, perpetuating segregation or reducing housing choice. Nevertheless, the City has

consistently provided a significant amount of affordable housing in the past and will continue to provide affordable housing in the future regardless of the applicability of the California Surplus Land Act.

Sincerely,  
RICHARD DOYLE  
City Attorney

By:   
S. SHASTA GREENE  
Sr. Deputy City Attorney

c Mayor and City Council  
Norberto Dueñas, City Manager  
Kim Walesh, Director of Economic Development  
Jacky Morales-Ferrand, Director of Housing

## **Attachment 6**



# FY 2016 INCOME LIMITS DOCUMENTATION SYSTEM

[HUD.gov](#) [HUD User Home](#) [Data Sets](#) [Fair Market Rents](#) [Section 8 Income Limits](#) [MTSP Income Limits](#) [HUD LIHTC Database](#)

## FY 2016 Income Limits Summary

FY 2016 Income Limit Area	Median Income <a href="#">Explanation</a>	FY 2016 Income Limit Category	Persons in Family							
			1	2	3	4	5	6	7	8
<b>San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area</b>	\$107,100	Very Low (50%) Income Limits (\$) <a href="#">Explanation</a>	39,100	44,650	50,250	<b>55,800</b>	60,300	64,750	69,200	73,700
		Extremely Low Income Limits (\$)* <a href="#">Explanation</a>	23,450	26,800	30,150	<b>33,500</b>	36,200	38,900	41,550	44,250
		Low (80%) Income Limits (\$) <a href="#">Explanation</a>	55,500	63,400	71,350	<b>79,250</b>	85,600	91,950	98,300	104,650

Selecting any of the buttons labeled "Explanation" will display detailed calculation steps for each of the various parameters.

NOTE: **San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area** contains Santa Clara County, CA.

\* The FY 2014 Consolidated Appropriations Act changed the definition of extremely low-income to be the greater of 30/50ths (60 percent) of the Section 8 very low-income limit or the poverty guideline as established by the [Department of Health and Human Services \(HHS\)](#), provided that this amount is not greater than the Section 8 50% very low-income limit. Consequently, the extremely low income limits may equal the very low (50%) income limits.

Income Limit areas are based on FY 2016 Fair Market Rent (FMR) areas. For information on FMRs, please see our associated FY 2016 [Fair Market Rent documentation system](#).

For last year's Median Family Income and Income Limits, please see here:

[FY2015 Median Family Income and Income Limits for San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area](#)

Select another FY 2016 HMFA Income Limit area that is a part of the **San Jose-Sunnyvale-Santa**

Select any FY2016 HUD Metropolitan FMR Area's Income Limits:

**Clara, CA MSA**

San Jose-Sunnyvale-Santa Clara, CA HUD Metro FMR Area ▼

San Benito County, CA HUD Metro FMR Area ▼

Select HMFA Income Limits Area

Select HMFA Income Limits Area

Or press below to start over and select a different state:

Select a new state

Update URL For bookmarking or E-Mailing

Prepared by the Economic and Market Analysis Division, HUD.