



Office of the City Attorney

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VIA EMAIL
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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