

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT: DECLARATION OF SURPLUS  
AND SALE OF 435 NORTH 2<sup>ND</sup>  
STREET, UNIT 213**

**DATE:** June 6, 2022

Approved



Date

**6/9/2022**

**COUNCIL DISTRICT: 3**

## **RECOMMENDATION**

Adopt a resolution:

- (a) Declaring the residential condominium unit located at 435 North 2<sup>nd</sup> Street, Unit 213 in San José (APN 249-73-047) surplus to the needs of the City of San José;
- (b) Waiving the procedures required under City Council Policy 7-13;
- (c) Approving the sale of the residential condominium unit to Kim Cosmas, or other qualified buyer, for no less than \$588,000;
- (d) Approving the payment of closing costs in accordance with Santa Clara County custom, and the buyer's agent fee in the amount of 2.5% of the sales price of \$588,000, or \$14,700, to eXp Realty of California, Inc., or a similar agent, in accordance with City Council Policy 7-6; and
- (e) Authorizing the City Manager, or her designee, to negotiate and execute a purchase and sale agreement, a Quitclaim deed, and all other documents necessary to complete the transaction.

## **OUTCOME**

City Council adoption of this resolution will allow for the sale of the City-owned residential condominium unit located at 435 North 2<sup>nd</sup> Street, Unit 213 to Kim Cosmas for the amount of \$588,000. The sale proceeds, after paying the 2.5% buyer's agent fee and closing fees, will be approximately \$566,000.

## **BACKGROUND**

On April 4, 2000, the City Council adopted the Executive Home Loan Program, which allowed

the City of San José (City) to offer loans in amounts up to \$250,000 to Executive Senior Staff and City Council appointees to assist in relocating to San José.

On December 14, 2004, the City Council adopted Resolution No. 72450, approving the appointment of Barbara Attard as the City's Independent Police Auditor. For this appointment, Ms. Attard relocated to San José and purchased the residential condominium located at 435 North 2nd Street, Unit 213 (Property) for \$350,000. To finance the home purchase, Ms. Attard obtained a \$250,000 loan through the City's Executive Home Loan Program, along with a \$100,000 first mortgage loan from Suntrust Mortgage Company.

At the end of the four-year appointment, the City Council did not renew Ms. Attard's contract as the Independent Police Auditor. Under the terms of the City's program and loan documents, Ms. Attard's loan repayment was due within six months of termination, or by July 1, 2009. On May 8, 2009, Ms. Attard notified the Department of Finance that she had attempted to sell the property in order to repay the outstanding loans, but due to declining economic conditions, the value of the property had dropped below the total outstanding debt.

The City loan was a "purchase money loan" and under state law the City is prohibited from any deficiency judgment if the property does not yield sufficient proceeds to pay off the first and second loans on the property. On August 4, 2009, the City Council adopted Resolution No. 75010 accepting the deed to the property in lieu of foreclosure, repaying the first loan to Suntrust Mortgage Company, and settling the City Executive Home Loan. The total settlement amount was \$348,939.

On August 6, 2009, the deed transferred from Ms. Attard to the City, and the City became the owner of the residential condominium. The condominium is a one-bedroom, one-bathroom unit comprising 789 square feet, built in 1994. It is part of the Ryland Mews condominium complex, located near the intersection of North 2nd Street and Hensley Street north of Downtown San José.

Staff attempted to sell the property in 2017 and received an offer for \$513,000. However, the sale was not completed. The unit is currently vacant.

## **ANALYSIS**

With rising prices in the local real estate market over the years, the value of the City-owned condominium has surpassed the prior settlement amount of \$348,939.

San José Municipal Code Chapter 4.20 permits the sale of City-owned surplus property upon the City Council finding and determining that the property is not needed for, nor adaptable to, municipal purposes. In this case, owning a residential condominium unit is not consistent with the City's mission and core services.

Due to several factors including rapid changes in the housing market, generally rising home values over the last several years, the positive value added by selling residential property in the spring/summer, and the ongoing liability of owing the property without a clear use to mitigate ongoing costs, staff's analysis is that this is the optimal time to sell the property.

While City Council Policy 7-13 generally governs the sale of city-owned property, staff recommends that City Council waive strict compliance with 7-13 in this transaction given that this is a unique property that the City does not typically own or possess (a single, residential condominium unit) which is not developable in any manner. The Surplus Land Act, the state law which also generally governs the sale of government-owned real property, also does not apply to this transaction as we do not own the property in fee simple as it is a condominium (fractional fee ownership) and is not developable. Moreover, the proposed transaction is for fair market value and staff has used a competitive process to reach the terms of this proposed sale by listing and marketing the property on the open market, has held open houses, reviewed all offers received from the public, and has an offer in hand at the listing price which was determined by staff to be its fair market value.

Staff reviewed market activity in the area and listed the property as for sale by owner on the Multiple Listing Service (MLS) and Zillow at an asking price of \$588,000. The asking price was set based on the consideration of previous condominium sales in the Ryland Mews complex and other condominiums available for sale in the immediate area at the time of listing. On May 10, 2022, staff received an offer from Kim Cosmas, a proposed "owner-occupant" via her real estate agent, Charlene Browne from eXp Realty of California, Inc., to purchase the property for the asking price of \$588,000. Kim Cosmas is a local teacher and currently rents a unit in the Ryland Mews condominium complex. They supplied a prequalification letter to obtain financing for the purchase and have received a home inspection report.

Below are the major terms of the sale:

- |                              |  |
|------------------------------|--|
| <b>1. Property:</b>          | 435 North 2 <sup>nd</sup> Street, Unit 213 San José, CA 95112<br>(APN 249-73-047)                          |
| <b>2. Seller:</b>            | City of San José, a California municipal corporation   |
| <b>3. Buyer:</b>             | Kim Cosmas   |
| <b>4. Price:</b>             | \$588,000  |
| <b>5. Buyer's Agent Fee:</b> | 2.5% of sales price, paid by Seller  |
| <b>6. Title/Escrow Fees:</b> | Paid according to county custom, currently estimated at \$7,333  |
| <b>7. As-Is Sale:</b>        | The property is sold, and the Buyer accepts the property in its "As-Is" condition, with any and all faults |

- 8. Due Diligence Period:** 30 Days from mutual execution
- 9. Close of Escrow:** July 22, 2022, or any other date mutually agreed to by Buyer and Seller

Staff believes that this offer reflects the fair market value of the property and recommends that City Council approve this sale. Note that the industry-standard 2.5% commission for the buyer's agent was offered in the property's listing and is consistent with City Council Policy 7-6.

### **CONCLUSION**

Approval of this recommendation will direct staff to negotiate and execute a purchase and sale agreement, and all other documents necessary, to facilitate the sale of the property to Kim Cosmas for \$588,000. Approximately \$566,000 in net revenue will be deposited to the City's general fund after paying the listing broker's 2.5% fee and closing costs in accordance with county custom.

### **EVALUATION AND FOLLOW-UP**

Upon the City Council's approval of the recommendations, staff will enter into agreements necessary to effectuate the sale of the property.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 21, 2022 City Council meeting.

### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, the City Manager's Budget Office, and Planning, Building, and Code Enforcement.

HONORABLE MAYOR AND CITY COUNCIL

June 6, 2022

**Subject: Declaration of Surplus and Sale of 435 North 2<sup>nd</sup> Street, Unit 213**

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### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **FISCAL/POLICY ALIGNMENT**

This proposed sale is aligned with the City's General Fund Structural Deficit Elimination Plan and strategy that calls for the sale of nonessential City-owned properties.

### **COST SUMMARY/IMPLICATIONS**

The proposed sale would result in net proceeds to the City in the amount of approximately \$566,000, which will be deposited into the City's General Fund.

### **CEQA**

Not a Project. File No. PP17-003. Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

NANCI KLEIN

Director of Economic Development  
and Cultural Affairs

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services, at [kevin.ice@sanjoseca.gov](mailto:kevin.ice@sanjoseca.gov).