

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.04.020 OF CHAPTER 4.04 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO STREAMLINE CURRENT CITY DISPOSITION PROCESSES FOR SURPLUS PROPERTY OR EXEMPT SURPLUS PROPERTY, AND AMENDING CHAPTER 4.20 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO CHANGE THE CITY'S PROCEDURES FOR NOTICING FOR PUBLIC SALES, THE DEFINITION OF "SURPLUS REAL PROPERTY," AND OTHER RELATED PROCEDURES FOR THE DISPOSITION OF REAL PROPERTY**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-004 (Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment) and File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

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

SECTION 1. Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

**4.04.020 Contract Authority of the City Manager**

- A. The City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council, any contract, for which:
1. Moneys have been appropriated; and
  2. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and
  3. The total monetary value expended or received by the City does not exceed the amount listed below with respect to the type of contract:
    - a. Emergency purchases pursuant to Section 4.12.220 regardless of the amount expended;
    - b. Agreements for the lease or purchase of supplies, materials and equipment including services incidental to such lease or purchase, having a maximum value of one million dollars (\$1,000,000) (as adjusted pursuant to Section 4.04.085), provided that the value of services incidental to such lease or purchase shall not exceed the lesser of two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085) or twenty-five percent (25%) of the total contract value;

- c. Agreements for services having a maximum value of two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- d. Agreements relating to the grant of funds to or from the City and agreements for the acquisition of public artwork having a maximum value of two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- e. Sponsorship Agreements (as described in Section 4.04.010A.7.)- having a maximum value of two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085), each with a term not exceeding three (3) years, and which otherwise comply with City Council policy; and
- f. All other types of contracts having a maximum value of one hundred thousand dollars (\$100,000) (as adjusted pursuant to Section 4.04.085).

B. In addition, the City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council the following:

- 1. Any contract for the payment of fees imposed on the developer of a residential project pursuant to Chapter 14.25 or Chapter 19.38 of this Code;
- 2. Leases, licenses or other agreements for use of property where the City is a lessee/user or lessor/grantor, where the rental payments or other fixed

consideration do/does not exceed a cumulative total of two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);

3. One or more amendments to a lease, where City is a lessee or lessor, for the purpose of undertaking a cumulative total of no more than one hundred thousand dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) in improvements to the leased property over the term of the lease, including option periods;
4. Tenant estoppel certificates on behalf of the City, where City is a landlord, tenant or subtenant under an existing lease;
5. Agreements for the purchase or donation of fee interests in real property or for the grant of easements to the City, and all documents necessary to complete the purchase, where:
  - a. The real property or the easement is being acquired in order to implement a project approved by the City Council; and
  - b. The grant of easement or acquisition of real property has been determined to present no significant toxics liability; and
  - c. The compensation to the seller of the real property or grantor of the easement for the interest to be conveyed does not exceed two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085) and all costs of purchase and additional costs of escrow and closing are lawfully available in accordance with Subsections 4.04.020A.1. and 2. above.

6. Temporary construction easements for terms not exceeding two (2) years where the City is grantor or grantee and the compensation for the temporary construction easement rights does not exceed two hundred fifty thousand dollars (\$250,000) (as adjusted pursuant to Section 4.04.085); and
  
7. Agreements for the sale of fee interests in real property where:
  - a. The real property has been declared surplus to the needs of the City by the City Council as provided in Chapter 4.20 or the disposition otherwise conforms to the Surplus Land Act (Cal. Gov. Code § 54220 et seq.), as may be amended from time to time ~~or by City staff, which declaration by staff shall be: i) undertaken only with respect to real properties for which the estimated fair market value (as defined in Chapter 4.20) is less than five hundred thousand dollars (as adjusted pursuant to Section 4.04.085); ii) limited to a determination that any such real property is not needed for, nor adaptable to, municipal purposes; and iii) pursuant to the surplusing administrative process approved by the City Manager and promulgated by the Director (as defined and provided in Chapter 4.20); and~~
  
  - b. The process for conducting the sale was a competitive process or otherwise complies with the provisions of Chapter 4.20; and
  
  - c. The real property is not independently developable (as defined in Chapter 4.20)-; and

- d. The sales price is less than ~~five-six~~ hundred thousand dollars (\$600,000) (as adjusted pursuant to Section 4.04.085), and such sales price is not less than the estimated fair market value of the real property; and
- e. Any reservation of easements or other rights to the City is limited to those reasonably necessary to support present or future public infrastructure, including, without limitation, rights-of-way and utilities.

8. Agreements for the granting of easements in real property where:

- a. The value of the grant of easement(s) is less than six hundred thousand dollars (\$600,000) (as adjusted pursuant to Section 4.04.085), and such value is not less than the estimated fair market value of the easement; and
- b. The purpose of the easement(s) is limited to those reasonably necessary to support present or future public infrastructure, including, without limitation, rights-of-way and private or public utilities.

- C. No provision of this ~~e~~Chapter is intended to limit the authority of the City Manager or any Council appointee from seeking approval of a specific action by the City Council, nor is it intended to limit the authority of the City Council to place limitations on the City Manager's or other Council appointee's authority with respect to entering into specific contracts.

SECTION 2. Chapter 4.20 of Title 4 of the San José Municipal Code is amended to read as follows:

**CHAPTER 4.20**  
**PROCEDURE FOR SELLING CITY-OWNED PROPERTY**

**4.20.010 Definitions**

The definitions set forth in this ~~s~~Section shall govern the application and interpretation of this ~~e~~Chapter.

- A. Appraisal. "Appraisal" means an appraisal of fair market value conducted by a qualified real estate appraiser, who may be a professional appraiser or a qualified employee of the City.
  
- B. Auction. "Auction" means a publicly held sale conducted after public notice as specified in Section 4.20.020 below, at which sale surplus property is sold to the highest bidder, on terms and conditions as Council or the Director may direct and set forth at the time of such public notice.
  
- C. City Manager. "City Manager" means the City Manager or his or her designee.
  
- D. Competitive sales process. "Competitive sales process" means a procedure for the sale of surplus real property by the City that provides public notice of the availability of surplus property for sale, and is any one of the following methods for sale:
  - 1. An auction; or

2. A request for competitive proposals, pursuant to procedures approved in writing by the Director; or
  3. A bid and negotiation, pursuant to procedures approved in writing by the Director; or
  4. Offering the property through the use of a duly licensed real estate broker selected in accordance with City's policies for hiring of consultants and applicable state and local laws pertaining to conflicts of interest, and the broker offers the property for sale pursuant to a marketing plan approved in writing by the Director.
- E. Director. "Director" shall mean the director of the City department designated by the City Manager to dispose of surplus real property.
- F. Direct negotiations. "Direct negotiations" shall mean a sale procured through negotiation, without requirement of notice of public sale or competitive process.
- G. Fair market value. "Fair market value" means the most probable price expressed in terms of money that a property would bring if offered for sale in the open market at an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which the property is adapted and for which it is capable of being used. For the sale of properties at a price greater than five hundred thousand dollars (\$500,000) (as adjusted pursuant to Section 4.04.085), the estimated fair market value shall be determined by appraisal; for the sale of properties at a price less than or equal to five hundred thousand dollars (\$500,000) (as adjusted pursuant to Section 4.04.085), the estimated fair market value shall be determined by either appraisal or good faith estimate.



- H. Good faith estimate. "Good faith estimate" shall mean an estimate of fair market value prepared a qualified real estate professional or qualified employee of the City, pursuant to an administrative process approved by the City Manager and promulgated by the Director.
- I. Independently developable. "Independently developable" shall mean that the real property is reasonably capable of being developed without consolidation with adjacent property, as determined by the City Council or by City staff, which determination by staff shall be pursuant to an administrative process approved by the City Manager and promulgated by the Director.
- J. Notice of public sale. "Notice of public sale" means ~~a notice of intended sale or availability for sale published beginning at least three weeks prior to the date of sale, for no less than three days, in a newspaper of general circulation in the City, which notice states the terms and conditions of the sale if any. In addition, but not as a substitution for the publication in a newspaper of general circulation in the City, public notice may also be given by any other means available, including but not limited to posting on the City's website, posting a notice on the property to be offered for sale, use of a multiple listing service, email lists of potential interested parties, or such other electronic means as may be developed from time to time.~~ a written notice of availability sent to the preferred entities specified in the SLA. A notice of public sale precedes a proposed sale but shall not substitute for any public notice required to place the proposed approval of a sale on an agenda of the City Council.

- K. ~~Proposed Sale Terms.~~ "Proposed Sale Terms" shall mean, with respect to any real property proposed to be disposed, buyer, price and any other terms applicable to the sale thereof that Council determines material to such proposed disposition. Surplus Land Act or SLA. The "Surplus Land Act" or "SLA", is found at Cal. Gov. Code § 54220 et seq., as may be amended from time to time, which provides the procedures and requirements that allow for local agencies to dispose of surplus real property.
- L. Surplus real property. "Surplus real property" means municipally-owned real property that the City Council has designated as surplus based upon its finding and determination that any such real property is not needed for, nor adaptable to, municipal purposes, or that the public interest would be served by the conveyance thereof. Such "surplus real property" shall mean "surplus land" or "exempt surplus land" as defined in the Surplus Land Act, at Cal. Gov. Code §§ 54221(b) and (f). The procedure through which real property is determined to be surplus shall be governed by an administrative process to be approved by the City Manager and promulgated by the Director.

#### **4.20.020 Sale of Real Property - Requirements for Notice of Sale and Price**

- A. Except as otherwise provided by the eCharter, this eChapter or Section 4.04.020B.7. of Chapter 4.04 of this Code, and except as to the sale of Pueblo Lands for which a special procedure is provided for in Section 4.20.090, 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 may be required under the SLA in Section 4.20.010F.~~; (iv) upon Council finding and determination that any such real property is surplus real property; and/or (v) otherwise upon such terms and conditions as the Council may direct and as otherwise allowed under the SLA. A sale at fair market value shall mean the sale

at the estimated fair market value, unless the City Council determines that a public purpose will be served by the sale of the property at less than its estimated fair market value, or that the terms, conditions or other circumstances of the sale are reflective of the fair market value notwithstanding the estimated fair market value.

~~B. The time of said sale shall in no case be earlier than three weeks from the first day of public notice or for a period of not less than three weeks from the date that electronic notice was given, whichever is greater.~~

~~C. In the event that the City establishes a value for the property below which no sale of the property would be approved, that value shall be included in any notice of sale of the property.~~

BD. The City may reject any offers it receives to purchase surplus real property, whether by auction or otherwise, for any reason allowed under the SLA.

#### **4.20.030 Direct Negotiations for Sale of Property**

A sale of surplus real property may be made by direct negotiations under those circumstances set forth in the Surplus Land Act and under the San José Municipal Code Sections 4.20.040B., 4.20.050, 4.20.060, 4.20.070, 4.20.080 and, 4.20.090, ~~4.20.100 and 4.20.110~~ of this Chapter 4.20.

#### **4.20.040 Competitive Process Required; Payment of Brokers**

A. All sales of surplus real property, except otherwise permitted in this ~~e~~Chapter, shall be by competitive process.

- B. The Council may approve the sale of property it has found to be surplus real property by direct negotiation upon a determination that sale of such surplus real property by direct negotiation will provide the greatest public benefit or that a competitive process is impractical or impossible, and when allowed by the SLA. Such a determination may be made at the time that the Council declares property surplus real property and authorizes its disposition. ~~The purchase price for such surplus property shall be the fair market value. In the event that the purchase price for any surplus property is five hundred thousand dollars or more (as adjusted pursuant to Section 4.04.085), the approval by Council of the sale thereof by direct negotiations shall be given only after a minimum of thirty (30) calendar days have elapsed from the date Council approved Proposed Sale Terms. Council's approval of Proposed Sale Terms shall not constitute City's agreement to sell the applicable real property or to be bound by such Proposed Sale Terms, any and all of which Proposed Sale Terms may be modified in Council's sole discretion in connection with Council's determination, if any, to approve the sale of such real property.~~
- C. In connection with the disposition of surplus real property by City, no commission, fee or other compensation shall be payable to real estate brokers except upon such terms and conditions as are approved by Council, by adopted policy, or otherwise.

#### **4.20.050 Conveyance by Exchange**

In any case where the City Council determines to convey City-owned real property for a consideration which consists wholly or partially of other real property, said conveyance may be made through direct negotiation, subject however, to such terms and conditions, if any, as the Council may in its discretion provide and as allowed under the SLA.

#### **4.20.060 Surplus Real Property Acquired by Gift**

Whenever title to any real property was acquired at no cost or expense to the City, the Council may order that title to any portion thereof that is surplus real property be conveyed without consideration to the person or persons, or their heirs, grantees, assigns or legal successors in interest, from whom title thereto was acquired by the City; provided, however, that title to the real property adjoining or abutting said surplus real property of the City is currently vested in such person or persons, or their heirs, grantees, assigns or legal successors in interest, at the time of such order and as allowed under the SLA.

#### **4.20.070 Sale of Surplus Real Property and Buildings to Adjacent Property Owner**

- A. Surplus real property for which the City has paid or given consideration of any kind may be sold to the owner or owners of property adjacent to such surplus City-real property through direct negotiation ~~at the fair market value~~ of such real property and when allowed under the SLA.
- B. Notwithstanding Section 4.20.070A. to the contrary and when allowed under the SLA, surplus real property for which the City has paid or given consideration of any kind may be transferred through direct negotiation with the adjacent property owner for nominal consideration where the Council determines that:
1. The surplus real property is not usable for a municipal purpose;
  2. The surplus real property is not independently developable and would not significantly enhance the development potential of the adjacent property pursuant to Title 20 of this eCode as it may be amended from time to time; and

3. The conveyance demonstrably reduces the expense to the City of ongoing maintenance for the surplus real property.
- C. The sale or transfer of surplus real property through direct negotiation with the adjacent property owner or owners shall otherwise be subject to the terms and conditions as the Council may in its discretion provide and shall conform to the procedures set forth under the SLA.
- D. Whenever any surplus building has been acquired from a person being or having been displaced by a public project, the City Manager shall have authority to sell such surplus building to the person being displaced through direct negotiation, subject to the following:
1. The sale price of the surplus building shall be at fair market value;
  2. The building shall be removed within the time and under the conditions which the City Manager determines are necessary to complete the public project; and
  3. The sale and procedures comply with the SLA.

#### **4.20.080 Conveyance of Property to Government Bodies, Public Utilities, and Certain Nonprofit Corporations**

- A. For purposes of this ~~s~~Section, the term "nonprofit corporation" means any entity which would qualify as such under the federal internal revenue code.

- B. The City Council may convey, through direct negotiation and as allowed under the Surplus Land Act, any City-owned surplus ~~City-owned~~real property to any of the entities listed in this sSection upon such terms and conditions, if any, as the City Council may in its discretion provide:
1. To the United States Government or any of its departments or agencies;
  2. To any other governmental or public agency;
  3. To any public utility;
  4. To any nonprofit corporation whose purpose is to provide housing for low and moderate income families;
  5. To any nonprofit corporation whose members or directors are subject to the approval of the City Council and whose sole purpose is to assist the City in financing improvements to be leased or sold to the City;
  6. To any other nonprofit corporation engaged in programs or projects which provide a direct benefit to the residents of the City; and
  7. To any other agency or entity required to receive notice of the proposed sale of surplus real property under the SLA.

#### **4.20.090 Sale of Pueblo Lands - Procedures - Form of Application to Purchase**

- A. All applications for the purchase of Pueblo Lands of the City shall be made in writing, giving an accurate description of the land applied for, and in the following form:

"Notice of application for the purchase of City Lands. Notice is hereby given that the undersigned will apply to the City Council of the City of San José, at its meeting to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for the purchase of the following described parcel of land, the same being part of the Pueblo Lands of said City, and described as follows: (Description of land.) Containing about \_\_\_\_\_ acres of land, when any and all persons interested may appear and contest said application. (Signed and dated.)"

- B. Said application shall be filed in the office of the City Clerk, provided that whenever an application is made for the purchase of any of the lands of the City lying without the corporate limits thereof, the party applying, at the time of filing his application for the purchase of such lands, shall file with the City Clerk an accurate survey and plot of the land applied for, showing the course and distance of each line, the number of acres contained in the tract applied for, and the names of the owners or occupants of the adjoining lands; and provided, further, that all surveys shall conform to the general lines in such manner as not to leave gores or fractions between surveys, and shall be made and certified to by some competent surveyor, to be designated by the City Council, or by the county surveyor of Santa Clara County.
- C. Upon the filing of an application for the purchase of land, as heretofore provided, it is the duty of the City Clerk to furnish to the party presenting the same a copy of said application, to which he shall attach a certificate in the following form:

"I hereby certify that the above is a correct copy of an application duly filed in the office of the City Clerk of the City of San José, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, City Clerk,"



which said certified copy of such application shall be published in some newspaper printed and published in the City for at least three (3) weeks before the same shall be acted upon by the City Council, and written or printed copies thereof shall be posted in two (2) or more of the most conspicuous places upon the land applied for, for at least fifteen (15) days previous to the time fixed for the hearing of such application before the City Council. Proof of such publication and posting shall be made by the affidavit of the applicant.

- D. All applications for the purchase of City lands shall be referred to the City Attorney, and the applicant shall furnish him an abstract of title. If the report of the City Attorney be favorable, and no good cause be shown to the contrary, an ordinance shall be passed fixing the price of the lands to be conveyed, where any charge thereof is intended to be made, and authorizing the City Manager, on behalf of the City, to sign and acknowledge a quitclaim deed of the premises mentioned in the application, to which shall be attached a certified copy of the ordinance authorizing the sale. Said deed shall be delivered to the applicant upon the payment to the clerk of the price fixed in the ordinance to be paid for the land, and the further sum of twenty dollars (\$20.00) to cover the expenses of procuring the deed, including the notarial and clerk's fee, cost of examination of abstract and of publication of the ordinance authorizing the sale. The clerk, out of the money received by him, shall pay to the City Attorney the sum of ten dollars (\$10.00) for examining the abstract, one dollar (\$1.00) to the notary for taking the acknowledgment of the deed, retain his own fee of three dollars (\$3.00) for drawing the deed, and then deposit the balance of the money in the City treasury.

#### **4.20.100 Private Sale of Property for Economic Development**

~~A. The City Council may, for purposes of economic development, convey any surplus City-owned real or personal property or any interest in such property through direct negotiation. The purchase price for such property shall be the fair market value.~~

~~B. The terms and conditions of any such conveyance shall be at the discretion of the City Council. The City Council may obligate the transferee of the real or personal property to:~~

~~1. Use the property only for the purposes designated by the City Council.~~

~~2. Begin the economic development of the property within a period of time fixed by the City Council.~~

~~3. Comply with any other conditions which the City Council deems necessary to carry out the purposes of economic development.~~

#### **4.20.110 Private Sale of Property to Ground Lessee**

~~A. For purposes of this section, "ground lease" means a lease of City property which permits the lessee to construct improvements on the leasehold property and which has a term of twenty or more years.~~

~~B. The City Council may convey to the lessee through direct negotiation, any surplus City-owned property that is subject to a ground lease, if the City Council determines that the benefit to the City from the sale of the property to the lessee exceeds the benefit from City's continued ownership of the property or the benefit~~

~~that the City would receive from the City's sale of the property as otherwise authorized by this chapter.~~

~~C. The purchase price for City property subject to a ground lease shall be its fair market value. For purposes of this section, "fair market value" shall be the greater of the following:~~

~~1. The fair market value of the City's interest in the property as leased; or~~

~~2. The fair market value of the property as unencumbered by the lease.~~

~~D. The City Council, at its discretion, may impose conditions on the sale of City's property to the lessee, including without limitation, requiring the purchaser to use the property only for the purposes designated by the City Council.~~

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk