



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: November 7, 2022

Approved

Date

11/17/22

**SUBJECT: AMENDMENT TO THE SAN JOSÉ MUNICIPAL CODE SECTION
4.04.020 OF CHAPTER 4.04 OF TITLE 4 AND COUNCIL POLICY 7-13
TO CONFORM WITH CALIFORNIA SURPLUS LAND ACT**

RECOMMENDATION

- (a) Approve an ordinance amending the San José Municipal Code Section 4.04.020 of Chapter 4.04, Title 4 streamlining current City disposition processes for surplus property or exempt surplus property, and Chapter 4.20 of Title 4 changing 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.
- (b) Adopt a resolution approving amendments to Council Policy 7-13 "Policy for the Sale of Surplus Property with Provisions Relating to Affordable Housing," as adopted April 26, 2016.

OUTCOME

Approval of this recommendation provides the Office of Economic Development and Cultural Affairs Real Estate Division with the necessary direction regarding the City's disposition of surplus property, ensures that the City's process of conducting property dispositions is in conformance with the State of California's Surplus Land Act, and resolves Recommendation #6 in Audit #21-03.

BACKGROUND

On April 30, 2013, City Council adopted Ordinance No. 29245 to amend Sections 4.04.010, 4.04.020, and 4.04.085 of Chapter 4.04 of Title 4 and Chapter 4.20 of Title 4 of the San José Municipal Code in its entirety to streamline real estate processes in connection with the sale of surplus property. The amendments to the San José Municipal Code Chapter 4.20, "Procedure for Selling City-Owned Property," implemented processes to recognize differences between

property types, including estimated value, size, and marketability, to more appropriately match a sale process to a specific property to streamline and expedite the process which would recognize additional revenue and provide a more efficient use of resources.

In 2019, the California Legislature amended the Surplus Land Act at California Government Code Section 54220 et seq. (Surplus Land Act), implementing new requirements for local agencies' sale of surplus land including, but not limited to, requiring written notice of availability. As a charter city, the City of San José took the position that it was not required to follow the requirements of the Surplus Land Act where it was inconsistent with the San José Municipal Code. This position was held to be invalid by the courts in the case of *Anderson v. City of San José* (Santa Clara Sup. Court Case No. 16CV297950, Sixth Appellate District Case No. H045271) which held that the Surplus Land Act constitutionally applies to charter cities, including the City of San José. Since this ruling, the City has acted in a manner consistent with state law as it pertains to the sale of surplus land and has followed state law in the event of any inconsistencies between the San José Municipal Code and the Surplus Land Act.

On May 21, 2021, the City Auditor's Office published a report titled "Real Estate Services: Better Tools and Coordination Can Improve Asset Management and Service Delivery," with six recommendations to better manage the City's real estate assets. Audit #21-03, Recommendation #6 states: "In order to ensure compliance with California's Surplus Land Act, the Real Estate Division should work with the City Attorney's Office to update Council Policy 7-13 and the San José Municipal Code (Chapter 4.20) and bring to the City Council for approval."

ANALYSIS

San José Municipal Code Section 4.04.020 - Contract Authority of the City Manager

Section 4.04.020 is the provision which delegates certain contracting authority to the City Manager. Highlights of significant changes are as follows.

As the only delegation of authority regarding the sale of fee interests in real property, San José Municipal Code Section 4.04.020 (B)(7) presently provides that the City Manager is authorized to declare surplus and sell any real estate which is not independently developable, provided a competitive process selected by the City Manager from the options permitted under the code is used (subject to certain exceptions) and the property has an estimated market value of less than \$500,000.

The proposed amendment would change the City's current procedures to require that the disposal process comply with the procedures required under the Surplus Land Act, as recommended by the Office of the City Auditor, and would increase the City Manager's authority to dispose of properties with market values of up to \$600,000 (as adjusted pursuant to Section 4.04.085) to further streamline current City disposition processes for properties that have previously been declared by City Council as surplus property or exempt surplus property. The City Manager does

not have delegated authority to declare City-owned property as surplus. The current limit of \$500,000 has not been adjusted for inflation since it was established in April 2013.

San José Municipal Code Section 4.04.020 (B)(8) would be added to authorize the City Manager to grant easements in real property under similar authority as that for disposition of fee interests in land, provided that the easement is necessary to support public infrastructure, such as rights of way and public or private utilities, and is less than \$600,000 (as adjusted pursuant to Section 4.04.085). The authority proposed to be afforded to the City Manager for the granting of easements has the same relevant limitations as are presently conferred to the City Manager for the sale of fee interests in real property – this revision would simply allow for easements to be treated the same as fee interests are presently.

San José Municipal Code Chapter 4.20 – Procedure for Selling City-Owned Property

San José Municipal Code Chapter 4.20 is the section that governs the procedures for the selling of the City’s surplus real estate.

Presently, the San José Municipal Code requires that City staff publish a “notice of public sale” with the terms and conditions of the sale at least three weeks prior to the date of sale in a newspaper of general circulation in the City or any other means available. The City’s current process, last updated in 2013, is not consistent with the Surplus Land Act. Again, the proposed revisions will bring these provisions of the code in conformance with the Surplus Land Act.

Additional highlights of significant changes are as follows:

The proposed changes to Chapter 4.20 would change the City’s procedures for noticing public sales, the definition of “surplus real property,” and other related procedures for the disposition of real property to conform with the requirements and definitions included in the Surplus Land Act, as recommended by the Office of the City Auditor. San José Municipal Code Section 4.20.100, which defines procedures for the private sale of property for economic development, and San José Municipal Code Section 4.20.110, which defines procedures for the private sale of the property to a ground lease, would be deleted as they are no longer allowed under the Surplus Land Act. .

Council Policy 7-13 – Policy for the Sale of Surplus Property with Provisions Relating to Affordable Housing

The final action being requested is the approval of an amendment to City Council Policy 7-13 “Policy for the Sale of Surplus Property with Provisions Relating to Affordable Housing” which would allow for the revision of the policy to conform with the Surplus Land Act, as recommended by the Office of the City Auditor. This policy is designed to facilitate the process for identifying and disposing of residential surplus land, guide how the City designates property as “surplus,” and the process by which it must be transferred or sold. The policy was adopted in 2016 and the intention behind it was to prioritize affordable housing development, with a

secondary emphasis on the development of open space and spaces for educational use. The current process for identifying surplus land still complies with State law, but the disposition process does not.

Unrelated information and nonconforming City procedures are proposed to be removed from the Background section. Sections A(7) and A(8) would be deleted and replaced with language citing requirements in the Surplus Land Act. Sections B, C, D, and E, which detailed the “Preferred Entity Sales Process,” restrictions for “Market Rate Surplus Land Sales,” exceptions and exemptions to the aforementioned sections, and the process for the sale of properties not independently developable with a fair market value of less than \$500,000, would be deleted since these sections do not conform with the Surplus Land Act. Section F “Reporting of Surplus Sold Property” would now be Section B due to renumbering and would be revised to conform with the Surplus Land Act. Real Estate staff shall coordinate with the Department of Finance to create and maintain a list of surplus properties and shall submit the list to the California Department of Housing and Community Development, as required by the Surplus Land Act.

CONCLUSION

The proposed changes to San José Municipal Code Section 4.04.020, San José Municipal Code Chapter 4.20, and Council Policy 7-13 implement Recommendation #6 from the Office of the City Auditor’s report titled “Real Estate Services: Better Tools and Coordination Can Improve Asset Management and Service Delivery” and will ensure the City’s compliance with California’s Surplus Land Act.

EVALUATION AND FOLLOW-UP

Staff will continue to follow appropriate procedures for the disposition of the City’s surplus property. No further City Council action is needed.

CLIMATE SMART SAN JOSÉ

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

POLICY ALTERNATIVES

City Council can reject staff’s recommendation and not adopt the revised San José Municipal Code Section 4.04.020, San José Municipal Chapter 4.20, and Council Policy 7-13. The result of this rejection would be that the City’s procedures for the disposition of surplus property would continue to be inconsistent with the updated requirements of the Surplus Land Act. In addition,

rejection of this recommendation would not fulfill the Office of the City Auditor's recommendation to update the San José Municipal Code and Council Policy 7-13 to ensure compliance with California's Surplus Land Act.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council agenda website for the November 29, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Auditor's Office, and Planning, Building, and Code Enforcement.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, 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.

/s/

NANCI KLEIN

Director of Economic Development and
Cultural Affairs

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services, at (408) 535-8197.