



City of Santa Clara

The Center of What's Possible

City Attorney's Office Memorandum

Date: December 18, 2019

To: The Honorable Mayor and Council Members

From: Brian Doyle, City Attorney and Assistant City Attorney Elizabeth Klotz

Subject: *Anderson v. City of San Jose* - Surplus Land Act Applies to Charter Cities

The purpose of this memorandum is to advise you regarding a recent court case impacting charter cities and the procedures for the sale or lease of surplus city property. This past November, the Sixth District Court of Appeal held that the Surplus Land Act, (Government Code § 54220, et seq.), hereinafter referred to as "Act," constitutionally applies to California's charter cities. (*Anderson v. City of San Jose*, 2019 Cal. App. Lexis 1182, 2019 WL 6317875). As a result of this decision, the City of Santa Clara must follow the procedures outlined in the Act prior to the disposition of city surplus property.

Surplus Land Act

The Act requires local agencies and special districts to offer surplus land to schools, parks and recreation, open space, and affordable housing developers prior to disposing of the land to any other entity. Disposal includes both the sale or lease of the land. If the disposing agency receives notice of interest from one of the entities under the Act, the parties must enter into sale or lease negotiations for a period of at least 90 days. If no notice of interest is received or negotiations do not result in a disposition of the property, and the local agency subsequently disposes of the surplus land for development of 10 or more residential units, then not less than 15% of the total number of units developed on the site must be sold or rented as affordable housing.

Anderson v. City of San Jose

The *Anderson* case arose out of a challenge to the City of San Jose's policies for the disposition of city property which did not comply with the requirements of state law. The City of San Jose held the position that as a charter city it was not required to comply with the Act. The trial court agreed with the City and the decision was appealed.

The Sixth District Court of Appeal reversed the lower court decision recognizing that while the process of disposing of city property is typically a municipal affair, the Legislature may advance state land use policy objectives by overriding the laws and policies of charter cities because addressing the shortage of sites available for low- and moderate-income housing is a matter of statewide concern.

The effect of this ruling is that the City of Santa Clara will have to comply with the provisions of the Act whenever it seeks to sell or lease its lands. The City will have to review any transactions that are currently being negotiated but have not yet transferred title or have been leased. Some

of these negotiations may need to be ended in order for the provisions of the Act to be complied with. This includes potential transactions that are currently under an Exclusive Negotiating Agreement (ENA) if that ENA was not the result of a procedure that was in compliance with the Act.

Amendments to the Surplus Land Act (AB 1486)

In addition, there will be changes in the Act as the result of Governor Newsom signing Assembly Bill 1486 into law this past October. AB 1486 amends provisions of the Act to promote and prioritize the use of surplus property for affordable housing projects. The legislation adds new requirements to the procedures for the sale or lease of surplus property and includes penalties for non-compliance.

AB 1486 amended the definition of "local agency" to include local agencies of every kind, including cities, counties, districts, joint powers authorities, successor agencies to former redevelopment agencies, housing authorities, or other political subdivisions of the state and any instrumentality thereof authorized to acquire and hold. Local agencies will also be required to take formal action in a regular public meeting prior to disposing of surplus land. The local agencies' declaration must be supported by written findings.

AB 1486 created a stronger enforcement and penalty provision by updating Gov't Section § 54230.5 and empowering the California Department of Housing and Community Development (HCD) and beneficially interested individuals with considerable oversight and authority to enforce the provisions of the Act. Local agencies will be required to send a notice of availability to housing sponsors that have notified HCD of their interest. The local agency, prior to agreeing to the terms of disposition of surplus land, must provide information about the disposition process to HCD. If notified by HCD of a violation of the Act, and if the local agency fails to correct its violation within a certain period of time, then HCD may impose a penalty on the local agency of up to 30% of the final purchase price of surplus property sold, and up to 50% for repeat violations of the Act. These provisions of the Act pertaining to enforcement and oversight by HCD and interested individuals will not be implemented until January 1, 2021.

Conclusion

As a result of *Anderson v. City of San Jose*, the City is required to follow the procedures outlined in the Surplus Land Act prior to the disposition by sale or lease of surplus property. The City will need to evaluate existing policies and procedures relating to the disposal of surplus land to ensure compliance with the new requirements. Any current negotiations under an ENA for the sale or lease of city property that was not the result of a procedure that followed the Act should be discontinued.



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