



AGENDA BILL

Agenda Item No. 4(F)

Date: June 6, 2017
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Compliance with State Surplus Land Act for Metropolitan Transportation Commission, One Bay Area Grant, Cycle 2 Program

ACTION REQUESTED

Adopt a resolution affirming compliance with the State Surplus Land Act to be eligible for the One Bay Area Grant, Cycle 2 Program available through the Metropolitan Transportation Commission.

BACKGROUND

Metropolitan Transportation Commission Funding Requirements

The Metropolitan Transportation Commission (MTC) is responsible for establishing the criteria and policies for allocating federal transportation funding in the San Francisco Bay Area. In 2012, MTC integrated various transportation programs with California's climate law (Senate Bill 375) and the Sustainable Communities Strategy to create the One Bay Area Grant (OBAG) Program. OBAG allows flexibility to invest in transportation categories such as Transportation for Livable Communities (TLC), bicycle and pedestrian improvements, local streets and roads preservation, and planning activities. OBAG also supports MTC's commitments to advancing the Bay Area's land use and housing goals. In November 2015, MTC adopted the selection criteria and programming policy for the second round of the OBAG (OBAG 2) for Fiscal Year (FY) 2017-18 through FY 2021-22 (per MTC Resolution No. 4202). The program framework was revised in 2016 to incorporate more specific housing-related policies into the program. The revisions include new eligibility requirements for OBAG 2 funding related to affordable housing, including a requirement that general law cities and counties adopt a resolution affirming compliance with the State Surplus Land Act as amended by Assembly Bill (AB) 2135, effective January 1, 2015.

State Surplus Land Act

The State Surplus Land Act (Act), enacted in 1968, contains procedures for disposition by sale or lease of surplus land by local agencies. Surplus land is land owned by a local agency that is determined to be no longer necessary for the agency's use, except land being held by the agency for the purpose of exchange or which is exempt under the Act or disposition of which is controlled by another statute, the terms under which it was acquired, or any other law, contract, or ruling. Prior to AB 2135, the Act required that the local agencies provide notice to and negotiate in good faith to sell or lease surplus property to entities that undertake affordable housing, parks and recreation, open space or school development. If the price or terms of a lease or sale could not be

agreed upon within sixty days, the local agency could dispose of the surplus land without fulfilling further requirements as specified in the Act. AB 2135 added provisions to the Act to prioritize affordable (low and moderate-income) housing development on surplus lands. Key provisions are as follows: expanded affordability requirements where an affordable housing project is developed to make at least 25 percent of the units affordable to lower income households for a period of at least 55 years; required a local agency to give first priority in disposing of the surplus land to an entity that agrees to these requirements; extended the good faith negotiation period to ninety days; added a requirement that if negotiations with one of the specified entities are unsuccessful then any residential development on the surplus land over ten units must make at least 15 percent of the units affordable; and allowed local agencies to sell land below fair market value for the purpose of low income housing development.

Contra Costa Transportation Authority Coordinated Call for Projects

In September 2016, the Contra Costa Transportation Authority (CCTA) announced a Coordinated Call for Projects for MTC's OBAG 2 funding as well as the CCTA's Measure J TLC Program and Pedestrian, Bicycle and Trail Facilities Program funding. City staff reviewed projects identified in various City plans, including the San Pablo Avenue Specific Plan & Complete Streets Plan, Active Transportation Plan, Urban Greening Plan, ADA Transition Plan, and Pavement Management Program, to best match eligibility and scoring criteria of the various funding programs. City staff selected the following three projects based on competitiveness given the program criteria and, in December 2016, submitted grant application to the CCTA for the following three projects:

- Central Avenue & Carlson Boulevard Pavement Rehabilitation for the OBAG 2 Local Streets and Roads Preservation Program;
- El Cerrito del Norte TOD Complete Streets Improvements for the OBAG 2 Competitive Program and Measure J Transportation for Livable Communities Program; and
- Arlington Boulevard Pedestrian Safety Improvements for OBAG Safe Routes to School Program and Measure J Pedestrian, Bicycle and Trail Facilities Program.

OBAG 2 Local Streets and Roads Preservation Program funding, which is for projects in the City's certified Pavement Management Program, is non-competitive and an amount of \$544,000 will be allocated by formula to the Central Avenue & Carlson Boulevard Pavement Rehabilitation Project. For the OBAG 2 Competitive Program and Measure J TLC (also a competitive program), various selection committees have highly ranked the El Cerrito del Norte TOD Complete Streets Improvements Project and have recommended that the CCTA Board approve funding in the amount of \$4,840,000 in OBAG 2 federal funds and \$2,312,000 in Measure J TLC funds. This project would implement elements of several City plan specifically multimodal transportation improvements to catalyze transit-oriented development (TOD) in the San Pablo Avenue del Norte Area. Improvements would include new and enhanced bicycle and pedestrian facilities connecting to the El Cerrito del Norte BART Station and TOD, bus and vehicle

circulation improvements, and streetscape elements. The project limits would span several streets including San Pablo Avenue, Eastshore Boulevard, Hill Street, Cutting Boulevard, and Knott Avenue. Unfortunately, the Arlington Boulevard Pedestrian Safety Improvement Project did not rank highly enough to be recommended for funding.

ANALYSIS

In Contra Costa County, jurisdictions must demonstrate compliance with the State Surplus Land Act by the time the CCTA approves their OBAG 2 project recommendations to MTC, which is anticipated to be at their June 21, 2017 Board Meeting. This requires submittal of a City Council resolution affirming the City's compliance with the Act to CCTA in early June 2017. Compliance with the Act is already required by State law; therefore adoption of the resolution does not represent a change to the City's obligations or policies. In addition, the City's Housing Element, adopted by the City Council in 2015, includes several affordable housing goals including to encourage innovative housing approaches in the design and ownership of units to increase the availability of affordable housing, provide regulatory and/or financial incentives where appropriate to offset or reduce the costs of affordable housing development, and assist and cooperate with non-profit, private, and public entities to maximize opportunities to develop affordable housing, including extremely low-income housing.

City staff anticipates bringing additional information on the Central Avenue & Carlson Boulevard Pavement Rehabilitation Project and El Cerrito del Norte TOD Complete Streets Improvements Projects (the two OBAG projects described above) as well as resolutions of support for those projects, as required by MTC, to Council for consideration in August pending action by the CCTA Board.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the resolution affirming compliance with the State Surplus Lands Act implements the City's Strategic Plan Goal B - Achieve long-term financial sustainability by continuing to pursue and support opportunities for new funding, including outside grants.

ENVIRONMENTAL CONSIDERATIONS

Adoption of the resolution affirming compliance with the State Surplus Lands Act is not a project subject to review under the California Environmental Quality Act.

FINANCIAL CONSIDERATIONS

There is no financial obligation associated with the action requested. Adoption of the resolution will ensure the City remains eligible for federal transportation funding administered by MTC.

LEGAL CONSIDERATIONS

The City Attorney and Successor Agency Legal Counsel have reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. AB 2135 Text
3. AB 2135 Additional Information:
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB2135
(reference weblink)

RESOLUTION NO. 2017-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AFFIRMING
COMPLIANCE WITH THE STATE SURPLUS LAND ACT AS AMENDED BY ASSEMBLY BILL
2135

WHEREAS, the San Francisco region has the highest housing costs in the United States; and

WHEREAS, the Bay Area produced less than 30% of the need for low- and moderate-income housing units from 2007-2014; and

WHEREAS, there are limited funding sources available to secure land for the construction of low- and moderate-income housing; and

WHEREAS, public lands can play a critical role in increasing the supply of land for affordable housing; and

WHEREAS, the Metropolitan Transportation Commission adopted Resolution No. 4202, outlining the programming policy and project selection criteria for the One Bay Area Grant Program (OBAG 2), including certain requirements to access these funds.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby agrees to comply with the terms of the Surplus Land Act – Assembly Bill 2135 (California Government Code § 54220, et seq.), as it exists now or may be amended in the future.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on June 6, 2017 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on June XX, 2017.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

Assembly Bill No. 2135

CHAPTER 677

An act to amend Sections 54220, 54223, 54225, 54226, and 54227 of, and to add Sections 54222.5 and 54233 to, the Government Code, relating to local government.

[Approved by Governor September 27, 2014. Filed with Secretary of State September 27, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2135, Ting. Surplus land: affordable housing.

(1) Existing law prescribes requirements for the disposal of surplus land by a local agency, as defined. Existing law requires a local agency disposing of surplus land to negotiate in good faith with certain entities that provided notice of a desire to purchase or lease the land and, if the price or terms cannot be agreed upon within a period of not less than 60 days with those entities, the local agency may dispose of the surplus land without fulfilling further requirements, as specified. Existing law authorizes a local agency selling surplus land for specified purposes to specified entities, including, but not limited to, low- and moderate-income housing, to provide a payment period of up to 20 years in a sales contract or trust deed. Existing law requires a local agency disposing of surplus land to give first priority in a purchase or lease to an entity agreeing to use the site for housing for persons of low or moderate income, except as specified. Existing law specifies that these and other related provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value.

This bill would require an entity proposing to use the surplus land for developing low- and moderate-income housing to agree to make available not less than 25% of the total number of units developed on the parcels at affordable housing cost or affordable rent for a period of at least 55 years to lower-income households, as those terms are defined in existing law. This bill would require a local agency to give first priority in disposing of the surplus land to an entity that agrees to these requirements. This bill would also require these requirements, as specified, to be contained in a covenant or restriction recorded against the surplus land at the time of sale, to run with the land, and be enforceable, against any owner who violates the covenant or restriction and each successor-in-interest who continues the violation, by a residents' association, as specified, and certain individuals, that include, but are not limited to, a resident of a unit subject to these requirements. This bill would increase the minimum time that an agency disposing of surplus land is required to conduct negotiations with certain entities desiring to purchase or lease the surplus land from 60 to 90 days. This bill would require, if the local agency does not agree to price and terms

with those certain entities and the surplus land is used for the development of 10 or more residential units, the entity or a successor-in-interest that received the surplus land to provide not less than 15% of the total number of units developed on the parcels at affordable housing cost or affordable rent, at terms similar to an entity that received first priority for providing not less than 25% of the total number of units at affordable housing cost or affordable rent, as specified.

This bill would permit the payment period for surplus land sold for low- and moderate-income housing purposes to exceed 20 years, subject to limits related to land use requirements for low- or moderate-income housing.

This bill would delete the statement that these provisions are not to be interpreted to empower a local agency to sell or lease surplus land at less than fair market value, and would provide that a sale or lease at or less than fair market value, as specified, shall not be construed as inconsistent with an agency's purpose. By increasing the duties of local officials in connection with sales and leases of surplus land, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 54220 of the Government Code is amended to read:

54220. (a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

(b) The Legislature reaffirms its belief that there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes. This article shall not apply to surplus residential property as defined in Section 54236.

(c) The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. Studies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations

utilize the transit system more than those living elsewhere, and that lower income households are more likely to use transit when living near a major transit station than higher income households. The sale or lease of surplus land at less than fair market value to facilitate the creation of affordable housing near transit is consistent with goals and objectives to achieve optimal transportation use. The Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, mixed-use, and affordable development near major transit stations.

SEC. 2. Section 54222.5 is added to the Government Code, to read:

54222.5. An entity proposing to use the surplus land for developing low- and moderate-income housing shall agree to make available not less than 25 percent of the total number of units developed on the parcels at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land at the time of sale, which shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the following:

- (a) The local agency that disposed of the property.
- (b) A resident of a unit subject to this section.
- (c) A residents association with members who reside in units subject to this section.
- (d) A former resident of a unit subject to this section who last resided in that unit.
- (e) An applicant seeking to enforce the covenants or restrictions for a particular unit that is subject to this section, if the applicant conforms to all of the following:
 - (1) Is of low or moderate income, as defined in Section 50093 of the Health and Safety Code.
 - (2) Is able and willing to occupy that particular unit.
 - (3) Was denied occupancy of that particular unit due to an alleged breach of a covenant or restriction implementing this section.
- (f) A person on an affordable housing waiting list who is of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and who is able and willing to occupy a unit subject to this section.

SEC. 3. Section 54223 of the Government Code is amended to read:

54223. After the disposing agency has received notice from the entity desiring to purchase or lease the land, the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If the price or terms cannot be agreed upon after

a good faith negotiation period of not less than 90 days, the land may be disposed of without further regard to this article, except that Section 54233 shall apply.

SEC. 4. Section 54225 of the Government Code is amended to read:

54225. Any public agency selling surplus land to an entity described in Section 54222 for park or recreation purposes, for open-space purposes, for school purposes, or for low- and moderate- income housing purposes may provide for a payment period of up to 20 years in any contract of sale or sale by trust deed for the land. The payment period for surplus land sold for housing for persons and families of low and moderate income may exceed 20 years, but the payment period shall not exceed the term that the land is required to be used for low- or moderate-income housing.

SEC. 5. Section 54226 of the Government Code is amended to read:

54226. This article shall not be interpreted to limit the power of any local agency to sell or lease surplus land at fair market value or at less than fair market value, and any such sale or lease at or less than fair market value consistent with this article shall not be construed as inconsistent with an agency's purpose. No provision of this article shall be applied when it conflicts with any other provision of statutory law.

SEC. 6. Section 54227 of the Government Code is amended to read:

54227. (a) In the event that any local agency disposing of surplus land receives offers for the purchase or lease of that land from more than one of the entities to which notice and an opportunity to purchase or lease shall be given pursuant to this article, the local agency shall give first priority to the entity that agrees to use the site for housing that meets the requirements of Section 54222.5. If the local agency receives offers from more than one entity that agrees to meet the requirements of Section 54222.5, then the local agency shall give priority to the entity that proposes to provide the greatest number of units that meet the requirements of Section 54222.5 at the deepest level of affordability.

(b) Notwithstanding subdivision (a), first priority shall be given to an entity that agrees to use the site for park or recreational purposes if the land being offered is already being used and will continue to be used for park or recreational purposes, or if the land is designated for park and recreational use in the local general plan and will be developed for that purpose.

SEC. 7. Section 54233 is added to the Government Code, to read:

54233. If the local agency does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given pursuant to this article and disposes of the surplus land to an entity that uses the property for the development of 10 or more residential units, the entity or a successor-in-interest shall provide not less than 15 percent of the total number of units developed on the parcels at affordable housing cost, as defined in Section 50052.5 of the Health and Safety Code, or affordable rent, as defined in Section 50053 of the Health and Safety Code, to lower income households, as defined in Section 50079.5 of the Health and Safety Code. Rental units shall remain affordable to, and occupied by, lower income households for a period of at least 55 years. The initial occupants of all

ownership units shall be lower income households, and the units shall be subject to an equity sharing agreement consistent with the provisions of paragraph (2) of subdivision (c) of Section 65915. These requirements shall be contained in a covenant or restriction recorded against the surplus land prior to land use entitlement of the project, and the covenant or restriction shall run with the land and shall be enforceable, against any owner who violates a covenant or restriction and each successor in interest who continues the violation, by any of the entities described in subdivisions (a) to (f), inclusive, of Section 54222.5.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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