



Staff Report

TO: City Council
FROM: Elizabeth Gibbs, City Manager
DATE: August 20, 2024
SUBJECT: Discussion and Direction on the Future Use of the City-owned Facility Located at 500 Grace Avenue and Update on the Surplus Land Act

Description City Council requested that staff bring forth an item for discussion and direction.

Background and Analysis:

At the July 16th City Council meeting, staff was directed to bring back an item for discussion and direction on Council's vision for the intended use of the City-owned facility located at 500 Grace Avenue.

Included in the adopted Capital Improvement Program are two projects, one directly tied to the improvement of the building – CIP Project No. CD-03 Downtown Revitalization/Grace Bldg/Real Estate Acquisition with a current balance of \$2,453,543. The second project is CIP Project No. ISFB-10 Grace Ave Roof Remove & Replace with a current balance of \$350,000.

At the October 25, 2022, City Council meeting, City Council discussed their vision for the building. Some key points from that discussion included focusing on the main building, ultimately leasing the building, potentially using it as an incubator, possibly covering the costs involved with renovating the building, improving the landscaping, bringing the building back to its original shell prior to leasing to a tenant, improving the parking lot, and engaging a contractor to evaluate the building prior to any construction.

City staff recommends that Council consider as a starting point engaging a firm to perform a basic review of the building to establish its structural integrity, identify the load bearing walls, produce a simple schematic of the existing floor plan, and identify any backbone service systems such as water, sewer, HVAC, electrical and gas.

Surplus Land Act

Government Code Section 54220 et seq codifies the Surplus Land Act (SLA). Since 2019, the state legislature has substantially amended the SLA, first with AB 1486 (2019), SB 747 (2023), AB 480 (2023), and SB 229 (2023). The State of California strongly prioritizes affordable housing development on land controlled by governmental agencies. AB 1486 specifically disallowed disposition of property for economic development purposes, determining that job creation did not establish a governmental purpose exempting such dispositions from the SLA. Cities had argued that the Economic Opportunity Law trumped the SLA, but the State has overruled that posture.

On August 1, 2024, the Department of Housing and Community Development (HCD) published the Final Surplus Land Act Guidelines (Attachment A) incorporating the 2023 legislative reforms. The Guidelines establish terms, conditions, forms, and procedures for identifying and disposing of surplus land, strengthens HCD's enforcement authorities, and imposes harsher penalties for non-compliance.

The SLA applies to land owned in fee simple by the City (currently or in the future). The SLA establishes three categories of land disposition: (1) land necessary for City use (e.g., civic centers, parks), (2) land no longer necessary for City use but exempt from most provisions of the SLA ("Exempt Surplus Land"), or (3) land no longer necessary for City use ("Surplus Land"). It is the last category that triggers the most onerous procedural burdens and the risk of state intervention. Ideally, the City can classify surplus land into one of the first two categories.

The SLA applies to the disposition of surplus lands, which includes the sale or long-term lease (terms longer than 15 years inclusive of any extension or renewal options). A short-term lease may offer relief from the SLA for the reuse of existing buildings that may require limited improvements; however, it is better to process an Exempt Surplus Land determination if applicable to minimize the constraints upon future development and enhance access to capital.

The first step is to determine whether the City can declare the property as Exempt Surplus Land under one of the statutory exemptions provided in Government Code Section 54221(f)(1). The harsher provisions of Article II and III of the SLA Guidelines (procedures for affordable housing solicitation, good faith negotiation, and determinations) do not apply to Exempt Surplus Land, although the City must still comply with Articles I/IV/V (notification, compliance and reporting to HCD) and the softer provisions of the SLA that existed on December 31, 2019 (before AB 1486 took effect).

Some of the more applicable exemptions include:

1. Small Parcels. Surplus land less than ½ acre (21,780 square feet) in size and not contiguous to other governmental land for open space or housing

purposes. Prior to 2024, the SLA exempted parcels of less than 5,000 square feet so this current year change offers greater opportunity for disposition of small parcels on an expedited basis.

2. Governmental Use Exchanges. Exchanges for other properties necessary for the City's public use.
3. Governmental Purpose Transfers. Transfer to other governmental agencies for public use, such as a school district for educational purposes.
4. Surplus Streets/Alleys. Surplus land that was formerly right-of-way or easements conveyed to an adjoining owner, such as vacated streets and alleys.
5. Land Subject to Valid Legal Restrictions. Surplus land subject to valid legal restrictions prohibiting housing not imposed by the local agency unless there is a feasible method of mitigating the restriction, subject to review by HCD of the documentary evidence.
6. Grandfathered Agreements. Surplus land subject to certain grandfathered agreements (ENA/PSA/DDA) entered into prior to September 30, 2019, with an outside closing date of December 31, 2027.
7. Mixed-Use Developments. Certain mixed-use developments that include affordable housing.

Prior to disposition, the City must declare a property "Exempt Surplus Land" by adoption of a resolution at a public hearing after publishing a public notice. The City must support the determination with written findings and provide documentation to the HCD at least 30 days prior to disposition of the surplus property. HCD will provide a letter confirming compliance with the SLA based upon the facts and documentation submitted.

For specified exemptions (including, but not limited to #1 and #4 above), the City may publish a public notice, distribute the notice to interested affordable housing developers, receive comments and then find that the surplus property is exempt from the SLA. The City does not need to conduct a public hearing for these specific exemptions but must otherwise comply with the documentation deliverables to HCD. Assuming no public objections or HCD interventions, this process can be completed within 3-4 months after initiation.

HCD maintains a database of SLA determinations with over 800 submittals as of July 31, 2024, with approximately 500 cases related to Exempt Surplus Land determinations. Based upon a cursory review, HCD approved most of the requests.

City property that does not meet one of the exemptions or is otherwise slated for disposition (sale or long-term lease) must comply with the notice and open bidding procedures of the SLA. Generally, this requires the following:

1. Notice of Availability. City must provide a Notice of Availability (“NOA”) to all public agencies serving the site, opportunity zone administrators, and certified housing sponsors.
2. Response to NOA. Any qualified entity would have 60 days after receipt of the NOA to submit a written interest statement.
3. Good Faith Negotiations. The City may then begin negotiations to determine the sale price or lease terms.
4. Multiple Responses. If the City receives multiple statements of interest, it must prioritize the proposals from affordable housing developers. If more than one housing proposer, the City must grant priority to the entity proposing the greater number of units and the deepest subsidy levels.
5. Affordability Covenant. If the City does not reach agreement on the price or terms of sale after 90 days of good faith negotiations, the City may dispose of the property without restriction by the SLA. However, it must record a covenant against the property requiring that at least 15% of any units constructed on the site in the future be affordable if 10 or more units are constructed.

This process takes approximately 6 months to complete if there are no significant challenges and timely responses by the City and HCD.

HCD will then review the City’s documentation and issue a Findings Letter within 30 days after receipt of documentation. Within 60 days after receipt of the Findings Letter, the City may either correct any identified issues or respond in writing to the Findings Letter. HCD will thereafter issue a Final Determination Letter confirming the local agency’s compliance with the SLA or issue a Notice of Violation. A local agency must then hold a public hearing to review the Notice of Violation and cannot dispose of the surplus land until after the public hearing and a final determination.

Compliance with the SLA

The Grace Avenue building (APN No. 417-064-005) resides on 14,810 square feet of land, with an additional 3,920 square feet (APN No. 417-064-004) of adjacent parking area (total area of 18,730 square feet). If the disposition includes the public alley (1,200 +- square feet) the total land area is 19,930 square feet, which is less than the ½ acre threshold (21,780 square feet). If the City does not include the dry cleaner site in the disposition, it should qualify for the small parcel exemption.

Alternatively, the City could seek to lease the property for a total term of less than 15 years (not considered a “disposition”). The adjacent dry cleaner could also receive clearance via one of these two approaches. To establish maximum flexibility for potential users, the City should pursue Exempt Surplus Land determinations.

City staff will initiate the process for a small parcel exemption request through HCD for the Grace Avenue building, as well as any other applicable City-owned land.

Fiscal Impact:

There is no fiscal impact to the General Fund.

The estimated cost to prepare this report is \$356.

Recommended Action:

Discussion and direction to staff.

Attachments:

- A. Surplus Land Act
- B. 500 Grace Ave Layout
- C. 1989 Expansion