



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** March 21, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** Resolution Of The City Council Of The City Of Emeryville  
Confirming Compliance With Assembly Bill 2135 Regarding Surplus  
Land And Affordable Housing

### RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution confirming its compliance with the Surplus Land Act, as amended by Assembly Bill 2135, to satisfy the Metropolitan Transportation Commission (MTC) requirements for grant funding eligibility.

### BACKGROUND

In 2014, the Governor signed Assembly Bill 2135 (AB 2135) into law. Prior to the adoption of AB 2135, local agencies disposing of "Surplus Land" as that term is defined by California Government Code Section 54221 (b) were required 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 could not be agreed upon within a period of not less than 60 days with those entities, the local agency could have disposed of the Surplus Land without fulfilling further requirements. The law also required Cities 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. These and other related provisions were not to be interpreted to empower a local agency to sell or lease Surplus Land at less than fair market value.

AB 2135 made several substantive changes regarding Surplus Land transactions as applied to affordable housing, including:

- a. An entity proposing to use the Surplus Land for developing low- and moderate-income housing is required 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.
- b. Local agencies must give first priority in disposing of Surplus Land to an entity that agrees to these requirements.

- c. The affordability requirements, as specified, must 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.
- d. 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 was increased from 60 to 90 days.
- e. 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 must 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.
- f. The payment period for Surplus Land sold for low- and moderate-income housing purposes may exceed 20 years, subject to limits related to land use requirements for low- or moderate-income housing.
- g. 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 was deleted, and the law now provides 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.
- h. The duties of local officials in connection with sales and leases of Surplus Land were increased, thus the bill is identified as a state-mandated local program.

## **DISCUSSION**

The Alameda County Transportation Commission (ACTC) recently advised each Alameda County agency applying for transportation funding as part of the second round of the One Bay Area Grant program (OBAG 2) to adopt a resolution committing to compliance with the Surplus Land Act as amended by AB 2135. Adoption of the resolution is required by MTC as part of the application process for OBAG 2 funds. The intent of this requirement is to bring attention to AB 2135. The term "Surplus Land" as defined in Government Code Section 54221 (b) is "land owned by any agency of the state, or any local agency, that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange".

The City is required to comply with the provisions of the Surplus Land Act and AB 2135 regardless of its application for OBAG 2 funds. The intent of MTC's requirement appears to be to raise awareness of existing law. The City does not currently own any property declared as Surplus Land.

### **FISCAL IMPACT**

AB 2135 provides 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.

As noted above, compliance with AB 2135 is required. Failure to adopt the resolution acknowledging this requirement would make the City ineligible for applying for certain state and federal transportation grants administered by MTC.

**PREPARED BY:** Amber Evans, Community Development Coordinator II

**REVIEWED BY:** Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Carolyn Lehr, City Manager

Attachment:

1. Resolution