

100
5/25/2021

(R-2021-458)

RESOLUTION NUMBER R- 313550

DATE OF FINAL PASSAGE JUN 01 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DECLARING THAT THE CITY'S UNDIVIDED 51 PERCENT INTEREST AS A TENANT IN COMMON IN THE REAL PROPERTY LOCATED AT 9575 AERO DRIVE IS EXEMPT SURPLUS LAND.

WHEREAS, the City of San Diego (City) currently owns an undivided 51 percent interest, as a tenant in common with The ARC of San Diego (ARC), of the approximately 4.51 acres of land located at 9575 Aero Drive, San Diego, California (Property); and

WHEREAS, the land is improved with an approximately 48,635 square foot office building, which along with an undivided 49 percent interest in the land, is owned by ARC; and

WHEREAS, in accordance with a recorded Covenant and Use Agreement between the City and ARC, ARC has notified the City that ARC wishes to sell all of its interest in the Property; and

WHEREAS, ARC has offered to sell its interest in the Property to the City in accordance with the requirements of the Covenant and Use Agreement, however, the City has chosen not to accept ARC's offer, and City staff recommends proceeding with efforts to sell the City's interest in the Property simultaneously with the sale of ARC's interest, so that the entirety of the Property can be sold to a new buyer; and

WHEREAS, no City department has requested to use the Property, or retain the City's interest in the Property for a future municipal use; and

WHEREAS, the Surplus Land Act (California Government Code sections 54220 through 54236) is generally intended to make a local agency's surplus land (i.e., land not needed for the

agency's use) available for potential acquisition by affordable housing sponsors for affordable housing purposes or by other local public entities; and

WHEREAS, California Government Code section 54221(b) and the April 2021 Surplus Land Act Guidelines (SLA Guidelines) published by the California Department of Housing and Community Development (HCD) require that prior to taking any action to dispose of land that is subject to the Surplus Land Act, the City Council must, at a public meeting, declare the land either surplus land or exempt surplus land, as each are defined in California Government Code section 54221; and

WHEREAS, if the Council declares land exempt surplus land, such declaration must be supported by written findings, which must be forwarded to HCD for its review at least thirty (30) days before the City's disposition of the land in accordance with Section 400(e) of the SLA Guidelines; and

WHEREAS, California Government Code section 54221(f)(1) sets forth various categories of exempt surplus land that are not required to be made available for potential acquisition by affordable housing sponsors or other local public entities; and

WHEREAS, the City's interest in the Property is exempt surplus land pursuant to California Government Code section 54221(f)(1)(G) because the Property is subject to valid legal restrictions not imposed by the City, including Federal Grant Assurances imposed by the Federal Aviation Administration (FAA) pursuant to Section 47107 of Title 49 of the United States Code, prohibiting the City from allowing housing to be developed on the Property, and those legal restrictions cannot be satisfactorily mitigated or avoided; and

WHEREAS, the City is subject to the Federal Grant Assurances because a portion of the Property is within the airport boundary line of the Montgomery-Gibbs Executive Airport

(Airport), the Property is shown on the City's FAA-approved Airport Layout Plan, and the City, as an airport sponsor, has accepted numerous Airport Improvement Program Grants as part of operating, maintaining, and developing the Airport over the last several decades; and

WHEREAS, the City is required to seek FAA approval of any disposition of the Property, which approval will be conditioned upon the future use of the Property being compatible with the operations and purposes of the Airport; and

WHEREAS, a sale of the City's interest in the Property for the development of housing may deprive the City of its rights and powers to direct and control airport development, including preventing the City from ensuring that the Property is only used for purposes that are compatible with the airport operations, maintenance and development, and would result in a use that is not shown on the City's FAA-approved airport layout plan, in violation of Federal Grant Assurances 5, 19, 21, and 29; and

WHEREAS, the FAA Compliance Manual, Order 5190.6B, establishes the policies and procedures that FAA personnel must follow in carrying out the FAA's responsibilities for ensuring an airport sponsor's compliance with federal law, including the Federal Grant Assurances, and sets forth the general rule that residential use on or near airport property is incompatible because of noise, and in some cases, safety; and

WHEREAS, Chapter 20 of Order 5190.6B generally provides that (i) residential use conflicts with Federal Grant Assurances 5, 19, and 21; (ii) airport sponsors must have rules and regulations to control or prevent residential use; (iii) airport sponsors are expected to oppose residential development affecting Airport operations; and (iv) airport sponsors are obligated not to make or permit any change or alteration in the Airport or its facilities that does not comply with the airport layout plan; and

WHEREAS, there is no feasible way for the City to satisfactorily mitigate or avoid its obligations under the Federal Grant Assurances to allow development of housing on the Property as a part of a sale of the City's interest; and

WHEREAS, representatives of the City and HCD discussed this matter, and HCD sent an email to the City on April 16, 2021, confirming that the City's interest in the Property qualifies as exempt surplus land pursuant to California Government Code section 54221(f)(1)(G); NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the City's undivided 51 percent interest in the Property is exempt surplus land pursuant to California Government Code section 54221(f)(1)(G).

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Melissa D. Ables
Melissa D. Ables
Deputy City Attorney

MDA:nja
05/07/21
Or. Dept: READ
Doc. No.: 2658570

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of 05/25/2021

ELIZABETH S. MALAND
City Clerk

By /s/Linda Irvin
Deputy City Clerk

Approved: 5/28/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on MAY 25 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 01 2021.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Linda Irwin, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 313550