

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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May 24, 2023

Charles McNeely, Interim City Manger
City of San Bernardino
290 North D Street
San Bernardino, CA 92401

Dear Charles McNeely:

RE: 295 Carousel Mall – Follow-Up to Notice of Violation

On March 16, 2023, the Department of Housing and Community Development (HCD) issued a Notice of Violation (NOV) to the City of San Bernardino (City) regarding the disposition of surplus land at 295 Carousel Mall (Property). The NOV noted that under Government Code 54230.5, subdivision (a)(1), the City has 60 days from the date of the NOV to cure and correct the identified violations of the Surplus Land Act (SLA). Subsequently, on May 4, 2023, the City sent HCD a letter confirming that on May 3, 2023, the Mayor and City Council voted to terminate the Exclusive Negotiation Agreement (ENA) with Renaissance Downtowns USA and ICO Group of Companies (RDICO) and noted that “the City is committed to working with HCD on the SLA process in the future when the City is prepared to dispose of the property.”

The purpose of this letter is to confirm that, based upon the City’s termination of the ENA and its commitment to work with HCD to ensure SLA compliance, the violations set forth in the NOV are resolved and HCD considers this matter closed. However, this letter also clarifies HCD’s expectations and next steps regarding how the City should proceed to ensure that the City fully complies with the SLA when it is ready to dispose of the Property in the future.

Next Steps

At such a time in the future that the City would like to dispose of the Property, the City must begin the disposition process anew either by following the standard SLA protocols to dispose of the Property as surplus land or by identifying a qualifying exemption in the SLA to dispose of the Property as exempt surplus land. To ensure compliance with the SLA, HCD must review and approve the City’s actions at each step of the process.

Standard Surplus Land Process

The required steps for the standard SLA disposition process include the following:

1. Declare the Property “surplus” (as supported by written findings) and not necessary for the City’s use at a regular public meeting. The original declaration of surplus land dated May 19, 2021, is sufficient.
2. Send an NOA via certified mail or email to the entities listed in Government Code section 54222 and allow 60 days for entities to respond to the NOA. *The City must submit a copy of the draft NOA for HCD to review and approve before submitting to the required noticing entities.* HCD requires 30 days to review and approve draft NOAs.
 - a. HCD maintains a list of Housing Sponsors that have notified HCD of their interest in surplus property on its website: <https://hcd.ca.gov/community-development/docs/AB1486DeveloperInterestList.xlsx>.
 - b. Pursuant to Section 202(a)(2)(D)(iv) of the SLA Guidelines, the City may include reasonable conditions or restrictions – approved by HCD – in the NOA.

Once the NOA has been delivered to the required noticing entities, the City must provide HCD with documentation that the NOA has been sent and the entities to which it was sent.

3. Provide HCD with any notices of interest that were received during the 60-day noticing period. If more than one interested entity responds, the City must provide information to HCD as to how those responses will be prioritized.
4. Engage in good faith negotiations for at least 90 days with entities that respond in a timely fashion to the NOA. The City must consult with HCD during this period to ensure negotiations are conducted in compliance with the SLA.
5. Share with HCD which proposals were selected as the finalists and why, provide documentation of the negotiations, and provide a written explanation for why the City is recommending the selection of a particular proposal, or why no proposal is being selected.
6. Submit documentation to HCD at least 30 days prior to agreeing to disposition terms pursuant to Government Code section 54230.5, subdivision (b). HCD must review the documentation and issue a findings letter before the City proceeds with the disposition.
7. Record the required affordability covenant on the Property.
 - a. If the City does not receive any notices of interest in response to the NOA or no disposition is finalized as a result of good faith negotiations, and the City receives a disposition approval letter from HCD, the City may dispose of the property without further regard to the SLA, provided a covenant or restriction is recorded against the property pursuant to Government Code sections 54233 or 54233.5.

Exempt Surplus Land Options

In addition to the standard SLA process, the City has other options to dispose of the Property. If the City determines that issuing a new NOA is not the preferred path forward, the exemptions outlined below are still available as options to cure and correct the NOV. Other exemptions may also be available.

Option 1: Use the “land transferred for affordable housing by a City or County” exemption, including but not limited to the main actions below:

1. Declare the Property “exempt surplus land” (as supported by written findings) pursuant to Government Code section 54221, subdivision (f)(1)(A), at a regular public meeting because the Property will be transferred for the development of affordable housing in accordance with Government Code section 37364, including but not limited to the main requirements listed below:
 - a. Eighty percent or more of the area used for the development of housing.
 - b. Forty percent of the total number of units developed on the Property restricted to lower-income households and half of these units restricted to very low-income households.
 - c. Recording an affordability covenant that the dwelling units produced on the Property for low- or moderate-income persons and families remain continually affordable for those persons and families for the longest feasible time, but not less than 30 years.
2. Submit written findings for the determination of “exempt surplus land” to HCD, pursuant to Section 400(e) of the SLA Guidelines. HCD must review the City’s findings and approve the exemption before the City proceeds with the disposition.

Option 2: Use the “Competitive Bid Mixed-Use Development Exemption” per Government Code section 54221, subdivision (f)(1)(F), including but not limited to the main actions below:

1. Declare the Property “exempt surplus land” (as supported by written findings) at a regular public meeting because the Property will be disposed of for a mixed-used development pursuant to the requirements found in Government Code section 54221, subdivisions (f)(1)(F)(i) or (ii), including the requirement that 75 percent or 25 percent, respectively, of the total number of units developed on the Property are restricted to lower-income households.
2. Put the Property out for competitive bid and invite all entities identified in Government Code section 54222, subdivision (a), to participate in the competitive bid process.
3. Submit written findings for the determination of “exempt surplus land” to HCD, pursuant to Section 400(e) of the SLA Guidelines. HCD must review the City’s findings and approve the exemption before the City proceeds with the disposition.

HCD reminds the City that the State of California is in a housing crisis and the provision of housing for all Californians is a priority of the highest order. While HCD respects the challenges inherent in interpreting ever-changing state housing laws, the City and all local jurisdictions statewide have a statutory obligation to follow all state housing laws.

Charles McNeely, Interim City Manager
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If the City or its representatives have any questions or need additional technical assistance regarding the applicability of the SLA, please contact HCD at PublicLands@hcd.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Zisser", with a long horizontal flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability