



Prioritizing Public Lands for Affordable Housing and other Public Benefits

Model Ordinances & Best Practices

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Model Ordinance to Prioritize Surplus Public Lands for Affordable Housing

INTRODUCTION

Increasing housing prices and rents have policy makers, advocates, developers and elected officials across the Twin Cities region searching for strategies to maintain the quality of life many enjoy, increase equitable access to opportunities, and improve housing choices for those with limited incomes. The cost of producing affordable housing, especially in high-demand neighborhoods, is a particular challenge. As land values increase and affordable housing resources remain limited, we need to better leverage public land assets that could be used for housing. Surplus and vacant public lands are a precious public resource and should be inventoried and managed accordingly. Public entities can adopt policies to ensure that long-term “community value,” not simply market value, is reflected in prioritizing future development of land.

Developers working on public sites must overcome the same challenges and cost issues inherent in multifamily, mixed-use and/or affordable housing development on privately-owned parcels. In fact, public sites come with additional challenges associated with the public planning, solicitation and development processes, including greater public scrutiny, additional regulatory requirements and multi-agency involvement in assemblage and disposition processes. Activating publicly-owned lands requires political leadership and commitment by agency staff to make information accessible to the public about the characteristics and location of available sites. Clarifying policies and procedures for their disposition and preferred use by private for-profit and not-for profit developers further helps to activate these sites. Even more than is the case with traditional development, early and continual community input is essential to building public support and advancing development projects that preserve or strengthen assets within existing neighborhoods, including affordable housing.

Other regions facing similar challenges have developed strategies to identify and prioritize public lands as opportunity sites for affordable housing and community-serving businesses or social services. This memorandum summarizes several relevant examples at the state, county, and city level, and includes a model ordinance that could be adapted for cities and counties in the Twin Cities region.

What is public land?

As defined by Enterprise Community Partners in “[Public Benefit from Publicly Owned Parcels](#)” (June 2017), public lands are “any site that is owned by a governmental or government-chartered entity. Such entities include (but are not limited to): units of state or local government, government departments (including housing and public works), transit agencies, school districts, and public institutions of higher learning. Publicly-owned parcels, often referred to as ‘public sites,’ ‘public land’ and ‘surplus land’ can include but are not limited to: vacant or underutilized parcels, parcels with existing community/public facilities with redevelopment potential, and/or land being purchased by a public agency for the development of community/public facilities,” including roads and transit corridors.

EXAMPLES

1. State Statutes

California, Florida, and Washington have statutes in place that direct state agencies (WA) and local jurisdictions (CA and FL) to create inventories and policies that support use of properties for affordable housing and other public benefits. The **Florida** statute is interesting in that it focuses on counties. Specifically, it requires that every 3 years each county prepare an inventory list of all real property within its jurisdiction to which the county holds fee simple title that is appropriate for use as affordable housing. This practice, it appears, has triggered efforts by local governments to create their own inventories and disposition policies that will support affordable housing. We spotlight such an ordinance from Jacksonville, FL in Table 3. **Washington DC** has an exemplary real estate disposition policy, approved in 2014, that could serve as a model for either state or city action. Unlike others it places specific requirements for affordability on any disposition of District-owned real property if it results in the development of a multifamily residential property consisting of 10 or more units. Affordability requirements vary by proximity to transit and depending on ownership versus rental tenure.

Table 1 provides further detail on public lands statutes for these four entities.

TABLE 1. STATE STATUTES SUPPORTING AFFORDABLE HOUSING ON PUBLIC LANDS.

Jurisdiction	Title	State Statute	Synopsis	Passed
State				
California	Surplus land: affordable housing	Assembly Bill No. 2135	This bill requires an entity proposing to use 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 requires a local agency to give first priority in disposing of the surplus land to an entity that agrees to these requirements. This bill also directs 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.	September 2014

Jurisdiction	Title	State Statute	Synopsis	Passed
State				
District of Columbia	Disposition of District Land for Affordable Housing Amendment Act of 2014	D.C. ACT 20-485	Requires specific percentages of units dedicated as affordable housing when public property is disposed of for development of multifamily projects with over 10 units. There are increased affordability requirements for development of land near fixed transit lines, and a lifetime (of the building) affordability covenant.	November 2014
Florida	Disposition of county property for affordable housing	Title XI, Chapter 125.379	By July 1, 2007, and every 3 years thereafter, each county shall prepare an inventory list of all real property within its jurisdiction to which the county holds fee simple title that is appropriate for use as affordable housing. The inventory list must include the address and legal description of each such real property and specify whether the property is vacant or improved. The properties identified as appropriate for use as affordable housing on the inventory list adopted by the county may be offered for sale and the proceeds used to purchase land for the development of affordable housing or to increase the local government fund earmarked for affordable housing, or may be sold with a restriction that requires the development of the property as permanent affordable housing, or may be donated to a nonprofit housing organization for the construction of permanent affordable housing. Alternatively, the county may otherwise make the property available for use for the production and preservation of permanent affordable housing.	2006
Washington	Surplus State Lands Disposal	Third Substitute House Bill 2382, Chapter 217, Laws of 2018	Requires designated state agencies to identify, catalog and recommend best use of under-utilized state-owned land and property suitable for the development of affordable housing for very-low, low- or moderate-income households. The department must consolidate inventories into two groups: 1) Properties suitable for consideration in affordable housing development; and 2) properties not suitable for consideration in affordable housing development. In making this determination, the department must use industry accepted standards such as location, approximate lot size, current land use designation, and current zoning classification of the property. The department shall provide a recommendation, based on this grouping, to the office of financial management and appropriate policy and fiscal committees of the legislature by December 1st of each year.	March 2018

2. County Ordinances

County-level examples from **King County, WA** and **Cook County, IL** can be helpful precedents. As noted in the preceding section, Florida statute requires all its counties to create inventories for this specific purpose.

TABLE 2. COUNTY SURPLUS LAND ORDINANCES THAT SUPPORT AFFORDABLE HOUSING.

Jurisdiction	Title	Ordinance	Synopsis	Passed
State				
Cook	Cook County Land Banking Authority	Ord. No. 13-0-7 §§ 103-1 et seq.	Allows the land bank to acquire, hold and transfer interest in real property throughout Cook County to (a) promote redevelopment and reuse of vacant, abandoned, foreclosed or tax-delinquent properties, (b) support targeted efforts to stabilize neighborhoods, (c) stimulate residential, commercial and industrial development, and (d) undertake its actions in ways that are consistent with goals and priorities established by local government partners and other community stakeholders. Priority is given to Affordable Housing including the preservation, production or rehabilitation of housing for persons with low or moderate incomes, and the preservation of long term land affordability through community land trusts or similar not-for-profit or public entities.	2013
King	Requiring public benefit, such as affordable housing, related to the sale of real property to public agencies	Ordinance 18540	Requires each County department to submit an inventory to the facilities management division of the status of all real property under County custodianship, its economic value, and potential uses. If the property is not needed for provision of essential government services, the division shall determine if the parcel is suitable for affordable housing and shall report these parcels to the county council each year. This ordinance also requires public benefits, such as affordable housing, when the county engages in direct sales of surplus real property to another government. In addition to the county receiving compensation for the real property, in order to qualify for a direct sale, public benefits, such as affordable housing, must also be received.	June 2017

3. City Ordinances and Processes

While there is no one size fits all approach for cities to take in disposing of surplus lands, there are a number of exemplary practices communities are taking to support affordable housing on surplus public lands. These are summarized in Table 3. Along with ordinances, this table includes some specific examples of city processes that relate to prioritization of public lands. For instance, New York City’s LIHTC QAP includes a specific prioritization and target for this purpose in allocating 9% tax credits. In Redmond, WA the city recently used a long-term lease mechanism, with severely discounted land costs, to support an affordable housing project.

TABLE 3. CITY ORDINANCES AND PRACTICES SUPPORTING AFFORDABLE HOUSING ON SURPLUS PUBLIC LANDS.

Jurisdiction	Title	Ordinance or Practice	Synopsis	Passed
City				
Atlanta, GA	To exempt affordable housing homesteading program from the sale and disposition process for city-owned real property	17-0-1463	Directs city agencies to create a list of potential surplus properties owned by the city that are appropriate for development. Identified, eligible properties advertised via a notice of request for proposals for developers to produce or rehabilitate owner-occupied housing. The RFP encourages proposals that use creative strategies to lower construction costs for single-family homes, including partnerships with job training agencies, innovative methods of construction, and smaller houses, with a preference to develop housing targeting households earning 0-30% AMI.	November 2017
Chicago, IL	City Lots for Working Families Program	02017-7116	Program provides vacant, City-owned lots (with a maximum appraised value of \$125,000) to developers of affordable single-family homes and two flats for \$1 each. Homes must be made available to qualified buyers with incomes up to 140 percent of AMI. Buyers must use the homes as their primary residences for a minimum five-year occupancy period.	November 2017

Jurisdiction	Title	Ordinance or Practice	Synopsis	Passed
City				
Jacksonville, FL	Donation and sale of real property for affordable housing purposes	Ord. 2015-519-E, subsection 3	Every December the city must create and publish a list of city-owned properties that are suitable for affordable housing development. A portion of these may be donated to eligible non-profits if they individually make a written property donation request to the Housing Chief for no more than five properties contained on the Affordable Housing Inventory List.	2015
New York City	HPD's Mixed Income Program: Mix and Match	Section 695(2)(b) of the General Municipal Law and Section 1802(6)(j) of the City Charter	Sponsors purchase City-owned or privately-owned land or vacant buildings and construct multifamily buildings in order to create affordable rental housing units with a range of affordability in which at least half of the units are affordable to low income households earning up to 60 percent AMI and the remaining units are affordable to other low income households. City sell the Disposition Area to the Sponsor for nominal price of one dollar per tax lot, for the purpose building affordable housing, community facilities, etc. The Land Debt will be repayable out of resale or refinancing profits for a period of at least thirty (30) years following completion of construction. The remaining balance, if any, may be forgiven at the end of the term.	recently used - May 2018
New York City	New York City Housing and Preservation Development's 2015 Qualified Allocation Plan (QAP)	n/a	Establishes a housing needs target for 9% tax credit: "Projects that convert City owned land or buildings that are difficult to develop or are in the City's Third-Party Transfer or Multi-family Preservation Loan programs to private ownership including, among other options, eventual tenant ownership." To advance that goal, the plan awards points to projects that meet these characteristics.	

Jurisdiction	Title	Ordinance or Practice	Synopsis	Passed
City				
Port Townsend, WA	Disposition of Surplus Property - Long Term Leases	Chapter 3.44	<p>City council determines whether identified surplus properties may be suitable for affordable housing. If so, the city council holds a hearing to determine whether property should be designated to meet affordable housing needs and surplus or retained for that purpose, or whether the property should be retained for some other public purpose, or surplus without making provision for affordable housing. If the property is designated to meet affordable housing needs, then the city would follow the disposition process in PTMC 3.44.050.</p> <p>Special Disposition. If the council finds, following a hearing, that property should be designated to meet affordable housing needs and surplus or retained for that purpose, the council may direct the city manager to proceed with special disposition (which may include disposition at less than market or appraised value, and without appraisal), under any one of the following conditions:</p> <ol style="list-style-type: none"> 1. Intergovernmental transfers (see subsection D of this section); 2. Transfer to qualified public or private nonprofit entities; 3. Transfer to the Port Townsend Public Development Authority or other public development authority created to develop or manage affordable housing. <p>Conveyance by special disposition may include (without limitation) sale, lease, options to purchase, lease purchase transactions, or public-private partnership, and may occur by use of negotiations or bidding, as the council deems desirable, fair and appropriate.</p>	
Redmond, WA	Request for Proposals	n/a	<p>City issued an RFP offering a long-term lease of approximately .81 acres of downtown land for construction of a minimum of 50 units of affordable senior housing. The solicitation included multiple goals, such as providing affordable housing opportunities for seniors, creating a residential design sensitive to its current and future surrounding land uses and providing open space for residents, while integrating the experience of pedestrians and other passersby. To make this possible, the solicitation stated that the city is willing to consider a lease term of 75 years with a \$1 annual lease payment.</p>	

Jurisdiction	Title	Ordinance or Practice	Synopsis	Passed
City				
San Francisco, CA	Surplus Lands Ordinance	Chapter 23A	<p>The purposes of this ordinance are to:</p> <p>(a) Prioritize surplus and underutilized public land in San Francisco that is suitable for the construction of housing in order to maximize the creation of deed-restricted affordable housing citywide, including ground floor retail and community facilities and open space;</p> <p>(b) Establish policy that the portfolio of housing built on public lands in San Francisco should maximize the amount of permanently affordable housing at extremely low, very low, low, moderate and middle income affordability levels, taking into account available subsidy sources for such affordable housing;</p> <p>(c) Establish policy to encourage state and special-district agencies (other than the City and County of San Francisco) that own surplus and underutilized public lands in San Francisco to prioritize permanently affordable housing for disposition and development of their sites;</p> <p>(d) Establish policy that any City department process for planning the disposition and development of any public lands should assume the standards of this ordinance;</p> <p>(e) Establish policy that the first priority use of surplus City-owned property shall be for the purpose of providing housing, shelter, and other services for people who are homeless; ...</p>	November 2002
Seattle, WA	Policies and Procedures that govern the Reuse and Disposal of real property	Res 31837 v2	<p>Seattle adopted a comprehensive policy in 2017 for evaluating reuse and sale of the City's Real Property to prioritize use for affordable housing, including a detailed process and prioritization. Recent updates made in October 2018 to the city's disposition guidelines allow for transfer of property at less than fair market value and direct 80% of net proceeds from the disposition of City surplus property not deemed suitable for affordable housing to be deposited into a Low Income Housing Fund.</p>	October 2018

APPENDIX A

MODEL ORDINANCE TO PRIORITIZE SURPLUS PUBLIC LANDS FOR AFFORDABLE HOUSING

AN ORDINANCE relating to the acquisition, management, sale, leasing and disposition of personal and real property for and by the County.

Sec. XXXX. – Purpose.

The County of [COUNTY NAME], in recognition of the shortage of decent affordable housing within the County, encourages the use of vacant, unused parcels of land located within and owned by the County for the development of affordable housing. It is the County’s intent to identify and catalog real property owned by the city that is no longer required for its purposes and is or may be suitable for the development of affordable housing for very low-income, low-income, and moderate-income households. Affordable housing needs and opportunities shall be considered before surplusing public lands, and consideration shall be given to disposing property for affordable housing needs or retaining properties in order to meet affordable housing needs.

Sec. XXXX. – Definitions.

For purposes of this ordinance, in addition to the terms defined above, the following terms shall have the meanings set forth below:

A. “Commercially reasonable sale” means a sale or other conveyance that is an “arms length” arrangement, for the fair market value of the property. A commercially reasonable sale or conveyance may be by auction, private sale, trade-in as a component of replacement of obsolete property for new property, sealed bids, or by broker or agent listing. City employees and elected officials shall be prohibited from purchasing or otherwise acquiring any interest in any city surplus property.

B. “Disposition” means the lease or sale of property or other disposition as defined in this chapter.

C. “Affordable housing” means residential housing that is rented or owned by a person who qualifies as a “very low-income,” “low-income”, or “moderate-income household” or who is from a special needs population, and whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household’s monthly income.

(i) “Very low-income household” means a single person, family, or unrelated persons living together whose income is at or below 50 percent of the median income, adjusted for household size, for the County where the affordable housing is located.

(ii) “Low-income household” means a single person, family, or unrelated persons living together whose income is more than 50 percent but is at or below 80 percent of the median income where the affordable housing is located.

(iii) “Moderate-income household” means a single person, family, or unrelated persons living together whose income is more than 80 percent but is at or below 115 percent of the median income where the affordable housing is located.

D. “Nonprofit corporation, qualified” as used in this chapter means private or public corporations duly organized according to the laws of the state of [STATE NAME], which non-profit corporations are exempt from taxation under USC 501(c) as amended, and which have a proven ability to provide affordable housing or can otherwise show an ability to do so and meet obligations that may be imposed in a conveyance of property to meet affordable housing needs. For purposes of donation of surplus personal property, this term shall also mean a nonprofit corporation that serves or benefits low-income or very low-income persons or persons with disabilities.

E. “Property” as defined by this chapter means all real property (real estate) owned in fee simple title by the [COUNTY NAME], located within the County’s incorporated municipal boundaries. “Property” shall also mean all personal property (non-real estate) and all real and personal property originally acquired for public utility purposes. “Property” shall not include public streets, alleys and rights-of-way which are subject to vacation and disposition. “Property” shall not include any equity interest in real or personal property held or owned by the County except for real estate security interests taken or released to secure the installation of development improvements.

Sec. XXXX. – Policies for Determining that Property is Surplus and should be Designated for Affordable Housing Purposes.

A. No later than June 30th of each calendar year, each department shall submit a report to the [RESPONSIBLE PARTY] on the status of all real property for which the department is the custodian and include in the report any change in use or status since the previous year's report.

B. County departments shall be required, no later than June 30th of every third calendar year beginning with 2019, to justify departmental retention of all real property for which the department is the custodian to the property services division.

(i) If in the judgment of the [RESPONSIBLE PARTY] a County department cannot justify the retention of real property for which it is the custodian or if a department determines that real property is surplus to its needs, the [RESPONSIBLE PARTY] shall determine whether any other County department has a need for the property that is related to the provision of essential government services, including but not limited to services for the public health, public safety, or services related to transportation, water quality, surface water or other utilities. If the property is not needed for the provision of essential government services, the [RESPONSIBLE PARTY] shall then determine if the parcel is suitable for affordable housing. If it is deemed suitable for affordable housing the County shall first attempt to make it available or use it for affordable housing. “Suitable for affordable housing” for the purpose of this section means the parcel is located within the Urban Growth Area (UGA), is generally suitable for development, and housing development is compatible with the neighborhood. If the property is not deemed suitable for the purposes described above, then it shall be determined whether any other department has a need for the parcel. Any real property that is surplus to a department’s needs that is deemed suitable for affordable housing should be designated to meet affordable housing needs and surplus or retained for that purpose.

Sec. XXXX – Process for Disposition of Surplus Property Suitable for Affordable Housing.

A. Commercially Reasonable Sale or Conveyance. Unless otherwise excepted in subsection B of this section, the actual sale or other conveyance of property shall be commercially reasonable. Real property will require an independent appraisal, except as provided in this section.

B. All surplus property deemed suitable for affordable housing shall be disposed of by [RESPONSIBLE PARTY], under any one of the following conditions, which may include disposition at less than market or appraised value, and without appraisal:

(i) Intergovernmental transfers;

(ii) Transfer to qualified public or private nonprofit entities;

(iii) Transfer to a public development authority created to develop or manage affordable housing.

Conveyance of surplus property deemed suitable for affordable housing may include sale, lease, options to purchase, lease purchase transactions, or public-private partnership, and may occur by use of negotiations or bidding, as the [RESPONSIBLE PARTY] deems desirable, fair and appropriate.