



*City Attorney's Department*

390 Towne Centre Drive-Lathrop, CA 95330  
Phone 209-941-7200 Fax 209-941-7233  
[www.ci.lathrop.ca.us](http://www.ci.lathrop.ca.us)

December 2, 2014

Honorable David P. Warner, Presiding Judge  
San Joaquin County Superior Court  
PO Box 201022  
Stockton, CA 95202

Re: Response to Grand Jury Follow-Up Report, Case No. 0312. (2012/2013)

Honorable David P. Warner:

Pursuant to Penal Code Section 933.05, this letter is to inform you that on December 1, 2014 at a regularly scheduled City Council Meeting, the City Council of the City of Lathrop reviewed and approved the above referenced Grand Jury Follow-up Report and directed me to write this letter of response on their behalf.

The Grand Jury Follow-up Report dated June 16, 2014 found that:

- Finding F1: "The City of Lathrop's policy on disposition of surplus property as established by Resolution 02-1231, Exhibit A is contradictory as it states that it does not apply to real property and then states that disposal of real property must follow state law."

Council Response:

Respondent disagrees with the finding. The Policy adopted by Resolution 02-1231 does not contradict because it is true that said Policy does not apply to the disposition of real property and its statement that such dispositions must follow state law is simply as statement of fact.

Nevertheless, Council amended said Policy with the modifications recommended by the Grand Jury on December 1, 2014 as follows:

“AMENDED (DECEMBER 1, 2014) CITY OF LATHROP POLICY REGARDING DISPOSITION OF SURPLUS PERSONAL PROPERTY”

...

“1. This policy applies only to personal property and shall not apply to real property, including but not limited to fee title, leases of more than one-year duration, and/or rights of way owned or acquired by the City of Lathrop now or in the future. ~~Disposition of real property shall occur as required by state law.~~”

...

Grand Jury Follow-up Report dated June 16, 2014 Recommendation 1.1:

- “It is recommended that before October 1, 2014, Lathrop City Council amend their existing policy on the disposal of surplus property so that it clearly states whether it applies to surplus land and buildings.”

Council Response:

The Policy adopted by Resolution 02-1231 does not contradict because it is true that said Policy does not apply to disposition of real property and its statement that such dispositions must follow state law is simply a statement of fact.

Nevertheless, Council amended said Policy with the modifications recommended by the Grand Jury at the December 1, 2014 Council Meeting in open session as follows:

“AMENDED (DECEMBER 1, 2014) CITY OF LATHROP POLICY REGARDING DISPOSITION OF SURPLUS PERSONAL PROPERTY”

...

“1. This policy applies only to personal property and shall not apply to real property, including but not limited to fee title, leases of more than one-year duration, and/or rights of way owned or acquired by the City of Lathrop now or in the future. ~~Disposition of real property shall occur as required by state law.”~~

...

(Please see attached Resolution No. 14-3848).

Grand Jury Follow-up report dated June 16, 2014 Recommendation 1.2:

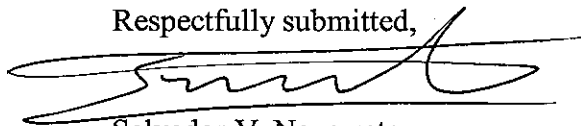
- “It is recommended that before October 1, 2014, the Lathrop City Council adopt a policy for disposition of surplus land and buildings to include: when appraisals are to be conducted, required compliance with Government Code Section 54220 *et seq.* and a prior public disclosure of the proposed sale.”

Council Response:

The City does not consider it necessary to adopt a new policy just to state it will comply with state law since it does not routinely adopt policies stating it will follow existing law.

Nevertheless, Council adopted a new policy for disposition of surplus real property at the December 1, 2014 Council Meeting in open session. (See Attached Resolution No. 14-3849).

Respectfully submitted,



Salvador V. Navarrete  
City Attorney

SVN/kl

Enclosures

Cc: Trisa Martinez at [grandjury@sjcourts.org](mailto:grandjury@sjcourts.org)

**RESOLUTION NO. 14-3848**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP  
AMENDING POLICY REGARDING DISPOSITION OF SURPLUS PERSONAL  
PROPERTY ADOPTED BY RESOLUTION NO. 02-1231 TO OMIT REFERENCE TO  
DISPOSITION OF REAL PROPERTY

**WHEREAS**, Council desires to omit any language in its Policy adopted by Resolution No. 02-1231 that may be read to suggest or imply said Policy applies to the disposition of real property;

**NOW, THEREFORE, BE IT RESOLVED**, Council amends, the Policy adopted by Resolution No. 02-1231 as follows:

"AMENDED (DECEMBER 1, 2014) CITY OF LATHROP POLICY REGARDING DISPOSITION OF SURPLUS PERSONAL PROPERTY"

...

"1. This policy applies only to personal property and shall not apply to real property, including but not limited to fee title, leases of more than one-year duration, and/or rights of way owned or acquired by the City of Lathrop now or in the future. ~~Disposition of real property shall occur as required by state law.~~"

...

**BE IT FURTHER RESOLVED**, all other language in Policy adopted by Resolution 02-1231 remains unchanged. Resulting Amended Policy is attached hereto as Exhibit "A" and incorporated by reference.

The foregoing resolution was passed and adopted this 1st day of December 2014, by the following vote of the City Council, to wit:

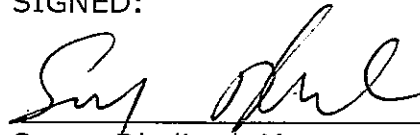
AYES: Akinjo, Dresser, Ornelas, Salcedo and Dhaliwal.

NOES:

ABSENT:

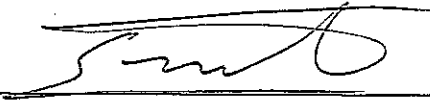
ABSTAIN:

SIGNED:



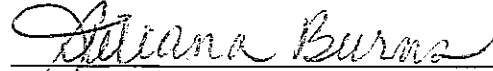
Sonny Dhaliwal, Mayor

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

ATTEST:



Juliana Burns, Acting City Clerk

Exhibit A

AMENDED (DECEMBER 1, 2014) CITY OF LATHROP POLICY REGARDING  
DISPOSITION OF SURPLUS PERSONAL PROPERTY

The following represents the policy of the City of Lathrop regarding the disposition of personal property:

1. This policy applies only to personal property and shall not apply to real property, included but not limited to fee title, leases of more than one-year duration, and/or rights of way owned or acquired by the City of Lathrop now or in the future. ~~Disposition of real property shall occur as required by state law.~~
2. At least once each year on or before January 31 of any given year, each Department Head, as that term is defined in the City of Lathrop Personnel Rules and Regulation, shall conduct a review of inventory, goods and supplies utilized by the department and shall determine what inventory, goods and supplies have become surplus. The listing of property determined to be surplus shall be forwarded to the Purchasing Officer. The Purchasing Officer shall then circulate the list of surplus property to all department heads that may select any items listed for continued use by the City prior to goods, supplies and inventory being subject to sale or other disposition. Department heads may request additional sales or disposals of property more often than once each year when surplus property accumulates to the point of warranting this action.
3. The Purchasing Officer shall determine the market value of the asset listed by the Department Head. For purposes of this policy, "Market Value" shall mean the value of goods if sold in the open market between a willing buyer and seller.
4. After determining the market value, the following procedure shall apply. In the event that the market value is less than \$5,000, the assets shall be deemed to be surplus property and shall be subject to sale on terms and conditions set forth herein. In the event that the Purchasing Officer determines that the market value is greater than \$5,000, the Purchasing Officer shall present the listing of such assets to the City Council for action regarding their declaration as surplus.
5. For goods valued at less than \$5,000, a sale shall be conducted by City staff at City Hall or in an alternative appropriate location determined the Purchasing Officer. The timing of such sale shall coincide, to the extent practicable, with the annual clean up offered by the City of Lathrop's franchised refuse hauler. The occurrence of such sale shall be advertised in a newspaper of general circulation at least two weeks prior to the planned

date of the sale, and shall include the general description of the items available for purchase and the terms and conditions under which sales shall occur.

6. Persons purchasing good at the sale shall execute a waiver of warranties and release of claims.
7. All purchases shall be paid for by cash, cashier's check or certified check. No personal checks shall be accepted. Depending upon the location and for a sale held during City hours, the Finance Director or authorized employee may approve payment by credit card.
8. In the event that goods are determined to have a market value greater than \$5,000 and following a declaration as surplus property by the City Council, these goods shall be offered to sale to the general public at auction or by sealed bid.
9. In the event that any time that has been declared to be surplus remains unsold at the conclusion of the sale, auction, or sealed bid process, which is applicable, a list of such goods shall be presented to the City Council, which shall decide disposition. Such disposition may include, but shall not be limited to, recycling, salvage or charitable donation. Prior to such disposition the Council shall make finding regarding the disposition as not creating a gift of public funds.
10. Employees of the City shall not have a right of first refusal to purchase any goods to be declared surplus property. However, employees, their families, and agents, shall have the right to purchase surplus property pursuant to the foregoing policy.

**RESOLUTION NO. 14-3849**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP  
ADOPTING POLICY REGARDING DISPOSITION OF  
CITY-OWNED REAL PROPERTY**

WHEREAS, the City of Lathrop does not have a policy in place for the disposition of real property; and

WHEREAS, Council desires to create a policy for disposition of City-owned real property; and

WHEREAS, the sale of City-owned real properties should follow a clear process;

**NOW, THEREFORE, BE IT RESOLVED**, Council adopts a new policy regarding disposition of City-owned real property (attached).

The foregoing resolution was passed and adopted this 1st day of December 2014, by the following vote of the City Council, to wit:

AYES: Akinjo, Dresser, Ornelas, Salcedo and Dhaliwal.

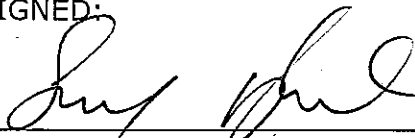
NOES:

ABSENT:

ABSTAIN:

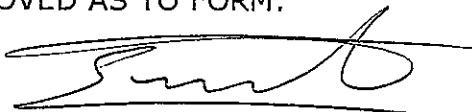


SIGNED:



Sonny Dhaliwal, Mayor

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

ATTEST:



Juliana Burns, Acting City Clerk

EXHIBIT "A"

CITY OF LATHROP POLICY REGARDING  
DISPOSITION OF CITY-OWNED REAL PROPERTY

**POLICY PURPOSE:**

It is the purpose of this policy to provide guidance for the disposition of City-owned real property.

**POLICY STATEMENT:**

In all real property transactions, consideration must be given to the City's near and long term goals and the public benefit derived from the use. Using an approach that will best accomplish the City's objectives given the circumstances at the time should be the guiding principle. It is the City's policy to manage its real property to further City goals.

**DISPOSITION OF SURPLUS REAL PROPERTY:**

Real property that is no longer needed for current or future municipal purposes, which does not provide a direct benefit to the community, shall be considered surplus property. Disposing of surplus property shall be done in a manner to maximize the benefit to the community and should be done whenever real estate market conditions are favorable to the City. Disposition of City-owned real property shall be done as follows:

- A. The City Council, by resolution shall declare City-owned property as surplus property and authorize sale/lease of property in compliance with the requirements of Government Code Section 54220 related to the sale of surplus land. The decision by City Council to declare City-owned property surplus shall be made during a public hearing. Public notice of the hearing shall include mailed notices to surrounding residents and/or property owners not less than 10 calendar days before the public hearing. Mailed notices shall be sent to a minimum of a 500 foot radius for properties of less than one acre and not less than 1,000 feet for properties greater than one acre.
- B. Determination of Value of Land. If the City Council determines that the property shall be sold, it shall authorize the City Administrator to sell the property for a price equal to or greater than the minimum price established by a current appraisal made by a qualified real estate appraiser. Notwithstanding the foregoing, no appraisal shall be required when the City Administrator reasonably determines that the property's estimated value is less than \$5,000.

- C. The City shall comply with any applicable state and federal laws for disposal. For example:
1. The City shall dispose of property in a manner which is for the common benefit of the city's citizens in accordance with California Constitution, art XI, sec. 5, California Government Code, section 37350.
  2. The City may dispose of surplus property on an annual basis in accordance with procedures set forth in California Government Code, sections 50569-50573, as amended.
  3. Alternatively, City may find the public interest and convenience require disposition of real property in accordance with procedures in California Government Code, sections 37420-37430, as amended.
  4. Surplus City-owned residential real property shall be disposed of in the manner prescribed in California Government Code, section 54236, *et seq.*, as amended.
  5. Where City-owned non-residential real property may be declared surplus, the City must comply with California Government Code, section 54220, *et seq.*, as amended.
- D. The City may use any of the following methods or combination thereof to maximize the benefit to the community. Methods of disposition should be determined on a case-by-case basis and may include:
- Auction
  - Negotiated Sale
  - Exchange
  - Lease
  - Request for Proposal

Discounts will not be negotiated unless an extraordinary need or circumstances is recognized by the City Council prior to negotiation, setting forth the amount of the discount and the justification for it. The purpose of this requirement is to demonstrate to the community that the City is not making a gift of public assets.

- E. Costs associated with the disposition of property shall come from proceeds of the sale or charges to the fund which owns the property shall come from the proceeds of the sale or charged to the fund which owns the property. Unless otherwise directed by the City Council, net proceeds from disposition of surplus property owned by the General Fund shall be place into the General Fund Reserve for Capital improvements. Proceeds from the sale shall be returned to that fund, except when a fund no longer exists, it will be at the direction of City Council.

- F. Sales of real property shall be on an all-cash basis or on other terms at the discretion of the City Council and in the best interest of the City.
  
- G. Broker Representation – The City may represent itself in real estate transactions; however, the City may from time to time authorize a brokerage agreement for the disposition of property. In such cases, the brokerage fee shall be as specified in the agreement between the City and the broker. The selection of real estate broker to provide real estate services shall be subject to the City's adopted procurement procedures for professional services.