



Consent Item 12

To:	Ava Community Energy Authority
From:	Inder Khalsa, General Counsel Howard Chang, CEO
Subject:	Approving a resolution declaring 251 8th Street to be “exempt surplus” property pursuant to Government Code Section 54221(f)(1)(B) and directing staff to take next steps, including exploring options for disposition of the property.
Date:	July 17, 2024

Summary/Recommendation

Approve a Resolution declaring Ava’s property at 251 8th Street to be “exempt surplus” property pursuant to Government Code section 54221 and authorizing staff to forward the Resolution to the California Department of Housing and Community Development (HCD). Note that this does not commit Ava to any particular outcome for the property, but it is a legally necessary first step in order for Ava to explore options for leasing or selling this Property.

Financial Impact

There is no financial impact associated with this action beyond nominal staff and attorney time.

Analysis and Context

In September 2021, Ava purchased property at 251 8th Street for use as office space. Ava intended to remodel the building and use it as its headquarters. Since that purchase, changes in the office real estate market, changes in Ava employee work patterns (specifically, the increase in remote or hybrid work), and increases in construction costs have made it more financially advantageous to Ava to rent office space in downtown Oakland. The property has remained vacant. Ava staff would like to explore Ava’s options for future use or disposition of the space, including the potential to sell or enter into a long term lease for the site.

Ava is a public agency subject to the Surplus Lands Act, at Government Code Section 55220, et seq. (the "SLA"). The SLA requires that agencies adopt a formal resolution to declare a property "surplus" or "exempt surplus" and submit the resolution to the California Department of Housing and Community Development (HCD) at least 30 days prior to taking any action to "dispose" of the property. This means that if Ava wants to consider options for the property or engage with interested parties (which is considered an action to dispose of the property), it must first adopt a resolution pursuant to the SLA.

The purpose of the SLA is to encourage agencies to sell or lease surplus property to affordable housing developers. The SLA generally requires that agencies follow a specific process prior to disposing of surplus land. This process involves sending a notice of availability of the property for sale or lease to affordable housing developers, and then negotiating with any interested developers for a set period of time. Under the standard SLA process, an agency can only proceed to dispose of the surplus property on the market after following this process.

There are, however certain exemptions from this standard disposition process under the SLA. One exemption applies to Ava's property at 251 8th Street. Specifically, Government Code Section 54221(f)(1)(B) provides that "Surplus land that is less than one-half acre in area and is not contiguous to land owned by a state or local agency that is used for open-space or low- and moderate-income housing purposes" is exempt from the SLA's standard process. But in order to claim property as "exempt surplus," the agency must adopt a resolution declaring it as such and submit that resolution to HCD prior to disposition of the property.

This is a legally necessary step in order for Ava to explore its options for 251 8th Street. Staff recommends that the Board approve the attached resolution declaring the property to be "exempt surplus" under this provision and authorizing staff to forward the resolution to HCD. This action will allow staff to evaluate options for the site, engage with potentially interested parties, and return to the Board with further information and recommendations with respect to the site.

It is important to note that this Resolution would not constrain Ava's final decision on how to utilize the site, and Ava could later decide not to dispose of the property and retain it for Ava governmental use. Under state law, however, Ava staff cannot actively pursue other possibilities for the property without first taking formal action under the SLA. Similarly, it is important to note that although the site is exempt from the full standard disposition process under the SLA, this does not preclude Ava from engaging with interested affordable housing developers with respect to the site and this is something that staff would like to actively pursue.

Assuming the Board approves the attached Resolution, staff would plan to return to the Board for additional discussion of the 251 8th Street property after conducting additional research and engaging with potentially interested parties.

Committee Recommendation

N/A

Attachment

- A. Board resolution declaring 251 8th Street to be exempt surplus pursuant to Government Code 54221(f)(1)(B)

RESOLUTION NO. R-2024-xx

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
AVA COMMUNITY ENERGY AUTHORITY DECLARING 251 8TH STREET TO BE
EXEMPT SURPLUS PROPERTY PURSUANT TO GOVERNMENT CODE SECTION
54221(f)(1)(B)**

WHEREAS the Ava Community Energy Authority (“Ava”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the JPA in November of 2019. The City of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The City of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

WHEREAS in September 2021, Ava purchased property at 251 8th Street located in Oakland, California and further described in Exhibit “A” (the “Property”) in fee simple with the intent to renovate the building to use for Ava offices.

WHEREAS changes in the market and increased construction costs since 2021 have resulted in leasing office space being more financially advantageous to Ava than renovating 251 8th Street to meet Ava’s needs.

WHEREAS Ava would like to consider its options for potential disposition of the Property. One option might include leasing the Property for a use that is aligned with Ava’s mission. Another option would be to offer Property for sale, potentially to affordable housing developers first, and, if that is not successful, on the open market.

WHEREAS Ava is required to comply with the Surplus Land Act, at Government Code Sections 54220-54234 (the “SLA”), which requires that the Board of Directors declare the Property either “surplus” or “exempt surplus,” supported by written findings and at a public meeting, before taking any action to dispose of the Property, which includes sale or long term lease.

WHEREAS the Property meets the requirements to declare it “exempt surplus” under Government Code Section 54221(f)(1)(B) as further described below.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF AVA COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board of Directors hereby declares that the Property is not necessary for Ava's use as an office space and is exempt surplus land pursuant to Government Code Sections 54221(b) and 54221(f)(1)(B). The Property is less than one-half acre in area and is not contiguous to land owned by a state or local agency that is used for open-space or low-and moderate-income housing purposes.

Section 2. Notwithstanding that the Property is hereby declared exempt surplus, the Board hereby directs Ava staff to explore options with respect to the Property, including a potential lease arrangement or marketing the Property to affordable housing developers or others.

Section 3. Ava staff are hereby authorized and directed to provide a copy of this Resolution to the California Department of Housing and Community Development (HCD) in the form and manner required by HCD at least 30 days prior to the disposition of the Property.

Section 4. Ava staff are authorized to take all actions which they may deem necessary or proper to effectuate the purposes of this Resolution, and any such actions previously taken are hereby ratified and confirmed.

ADOPTED AND APPROVED this 17th day of July, 2024.

Jack Balch, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board