

San Joaquin County Grand Jury



Getting Rid of Stuff - Improving Disposal of City and County Surplus Public Assets 2012-2013 Case No. 0312

Summary

Cities and counties are authorized to purchase capital assets such as land, vehicles and equipment in order to function efficiently. When public land, buildings, vehicles or equipment are no longer needed by the local government, the governing bodies are responsible for being good stewards of the public's capital assets and getting the best possible return of public funds. Within the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy and San Joaquin County there are different degrees of control over the disposition of their assets, as well as the extent to which the process is made known to the public. Some public entities are very conscientious, others less so. In an effort to promote public transparency and consistency while disposing of the capital assets, the 2012-2013 San Joaquin County Grand Jury (Grand Jury) recommends procedures be adopted by the local governments that are clear, consistent and provide to the public relevant information on the disposal process and results.

Glossary

Brown Act

The Ralph M. Brown Act (Government Code Sections 54950 *et seq.*) regulating the conduct of public meetings and related public information.

Capital Asset

Land, buildings, vehicles and major equipment (e.g., generators, pumps) having a multi-year useful life.

et seq.

To include sections that immediately follow the identified section and pertaining to the same topic.

Fiscal Year (FY)	Local government budget year beginning on July 1 and ending on the following June 30.
California Government Code Section 37350	Authorizes a city to dispose of real and personal property for the common benefit.
California Government Code Section 54222	Requires local governments to contact parks departments, affordable housing developers, school districts and other agencies about available surplus land that could be used for housing or recreation purposes prior to sale of the land.
California Government Code Section 65402	Requires proof of compliance with a local government's General Plan and approval by the local planning agency before disposal of land, unless previously exempted by the legislative body.
General Plan	A land-use document describing the proposed overall development for a city or county.
Indemnification	A legal protection by one party against a loss or liability that might be suffered by another party.
Negotiated Sale	Direct discussions between a government and a private entity about the terms and conditions of sale of a capital asset, including price.
Personal Property	Assets that are not real property, including office equipment, furnishings, etc.
Real Property	Land and buildings.
Surplus Property	<i>Capital assets</i> that are no longer needed or useable.

Background

Local governments (cities and counties) are authorized under State law to acquire real property, vehicles, equipment and other assets through various means including direct purchase, negotiations with the seller, dedication from an individual or entity, and receipt as a gift. Once in possession by the government agency, they become public property held for the common good of the community. These items are referred to by different names by the different local governments. They can be referred to as personal property, fixed assets, capital assets, personal property or commodities. For the purpose of the Grand Jury's investigation, the term used to include all these items is *capital assets*.

After a period of time the vehicles and equipment become obsolete, are no longer able to operate, or are just no longer needed by the local government. State law, under Government Code Section 37350, authorizes the local government to dispose of real and personal property when it is in the common good. The law does not state how the disposal of surplus property is to take place, leaving it to the local jurisdiction to make a determination. Among the methods most commonly used by local governments in California include sales at auctions by public or sealed bids, conducted either by the local government or under contract with a private auction firm, trade-ins or sale as scrap metal. Increasingly, the use of private on-line sale agencies or sales on eBay is becoming an acceptable practice. The underlying principle has been to ensure local governments receive the highest value for the surplus assets.

The sale of land is covered under separate sections of State law, including Government Code Section 54220 *et seq.* and Section 65402. Section 54222 establishes the State policy whereby any public land no longer needed by a city or county first be offered for use as: Recreational facilities, school facilities, affordable housing development or for enterprise zone projects. An offer to sell or lease the land must be made in writing to park or recreation agencies, school districts, affordable housing developers, and nonprofit neighborhood enterprise associations. The entities have 40 days in which to provide a written response to the city or county accepting or rejecting the offer. Government Code Section 65402 requires local governments to determine that the potential use of surplus land conforms to the jurisdiction's General Plan before disposal occurs. While not separately designated in State law, the sale of buildings is generally handled in the same manner as land since sales of buildings almost always include the land under the building.

Beyond the general requirements in the Government Code, each local government is allowed to establish specific disposition procedures. Requiring an independent appraisal of the land and buildings before sale, negotiating a sale or conducting a sealed bid sale, trading land or donating land are all decisions to be made by the local legislative body. Some procedures bring more public disclosure and transparency than others. Sealed bids bring assurance that all potential buyers are treated equally, and the best possible value is received for the property. Negotiated sales, depending on the information released, may lead to questions of whether the full public benefit has been received for the land. The Brown Act does permit negotiations for the sale of surplus land to be conducted by the legislative body in closed session with only the final action occurring in public. The amount of information disclosed to the public depends on the legislative body.

Issues

This investigation into the disposition of local government's surplus public assets was initiated by the Grand Jury. The State Legislature's recent disbanding of redevelopment agencies in the State and the accompanying requirement that all capital assets of the redevelopment agencies be disposed of raised the question regarding how local governments were handling such disposals and whether clear, formal, and identifiable procedures were being used. To provide a broader review of surplus property disposal procedures, the scope of the investigation was expanded to include the County government and all cities within the County.

Method of Investigation

The Grand Jury requested information through a survey from San Joaquin County and the cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton and Tracy regarding their procedures for disposing of land, buildings, vehicles and major equipment. Specific information on the number of sales of land, buildings, vehicles and equipment completed from 2007 to 2012 was also requested. After the initial responses were received from all of the local governments, additional information was requested with a questionnaire regarding the most recent sales. This was to obtain more details on the actions taken to determine if sales were in the public interest, transparent, and void of any appearance of conflict or favoritism. The Grand Jury also reviewed State laws, local ordinances and policy/procedure manuals related to disposal of assets. One interview with a city official was also conducted.

Discussion, Findings and Recommendations

City of Escalon

The City of Escalon indicates that it relies on Government Code Sections 35370 and 54220 *et seq.* as its authority for disposal of major capital assets. There are no specific sections in its Municipal Code or any policy or procedures manuals outlining who has authority to dispose of the assets or the methods to be used. Response to the Grand Jury's survey indicated that from 2007 to 2012 the city disposed of one parcel of surplus land through a negotiated sale, three disposals of vehicles and one disposal of equipment through a contract with a public auction firm. The City Council did take a public action to declare the vehicles as surplus and authorized their disposal.

Findings

F1.1 The City of Escalon has no adopted Municipal Code provision, policy or procedure related to the disposal of major capital assets stating who has authority, the methods to follow or the reporting requirements.

F1.2 The contractual agreement with the private auction firm hired by the City was a form provided by the company containing very limited information such as protection for the City and fees to be paid.

F1.3 The disposal of land was by negotiated sale, with all discussions held in closed session. Only the minimum information required by the Brown Act was disclosed on the Agenda.

F1.4 No information on the details of the land sale was provided to the public prior to the City Council's public action.

Recommendations

R1.1 Prior to December 2013 the City Council adopt either an ordinance or a policy detailing procedures to be used for the disposal of surplus capital assets, including who is responsible for the disposal, when City Council approval is required, notification requirements, what information is made available to the public and how such information it is to be presented.

R1.2 No later than September 30, 2013, the City adopt a contract document to be used for all sales of surplus vehicles and equipment that provides a clear indication of the fee to be paid the selling firm, protections for the City against claims resulting from the auction, liabilities and responsibilities of all parties and other legal protections of the City's interests.

R1.3 After each sale of vehicles or equipment the City manager is to provide a summary of the sale through a public document.

R1.4 No later than September 30, 2013, the City adopt a policy for disposition of surplus land and buildings to include when appraisals are to be conducted, the procedures for compliance with Government Code Section 54220 *et seq.*, and a prior public disclosure of the proposed sale.

R1.5 Before any future disposal of land or buildings is finalized, a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Lathrop

The City of Lathrop's Municipal Code Section 2.36.040 designates a Purchasing Officer, who is the city manager or designee, to dispose of city property designated as surplus. Council Resolution 02-1231 establishes a policy for the disposition of surplus property including value levels at which the purchasing officer is authorized to sell the property and when council action is required. A request for council action must be included in a staff report to council listing the property to be designated as surplus and sold at an approved auction. A council resolution is required for the approval.

Response to the Grand Jury's survey indicated that from 2007 to 2012 the City had no disposal of surplus land or buildings and that there was one sale of surplus vehicles. The City has a detailed *Agreement to provide Surplus Inventory Auction Services to the City of Lathrop* detailing obligations for the auction of surplus inventory, including fees, declarations, services to be provided, and other legal requirements. The Grand Jury also noted that the City has a financial trail which records revenues from the sale of surplus property to appropriate City accounts.

Findings

F2.1 The surplus property policy has no reference to compliance with Government Code Sections 54220 *et seq.*

Recommendations

R2.1 No later than September 30, 2013 the City 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.

R2.2 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Lodi

The City of Lodi addresses the disposal of surplus capital assets in its Municipal Code. Section 2.12.120 authorizes the City manager, after a recommendation from the City's purchasing officer, to sell personal property with a value of less than \$2,000 by advertised bid or by auction. A report to the City Council is required within 30 days of these sales. Section 3.20.030 grants the purchasing officer the authority to transfer surplus supplies and equipment between departments or to recommend their sale. Section 3.20.110 authorizes the sale of personal property with an estimated value of less than \$20,000 to be made in the open market without observing formal contract procedures. Section 3.20.130 exempts the disposition of fleet vehicles and other specific equipment from the formal contracting procedures. In response to the Grand Jury's survey the City also identified a series of Government Code sections that are related to disposal of capital assets and are followed in the City's procedures. The City also noted that capital assets purchased with grant funds may be subject to restrictions or special requirements of the grant when it is sold.

Response to the survey indicated that between 2007 and 2012 the City of Lodi had two sales of land, both by negotiated sale; 21 sales of surplus vehicles by private auction firms, traded for new vehicles, or sold as junk; and, 20 sales of major equipment by negotiated sale or private auction sale. The *Auction Agreement* between the City and the auction firm, which is approved by the City manager as specified by the City Council, contains indemnifications, security interests and other provisions giving the City liability protection. The Auction Agreement also requires the contracted auction firm to advertise the sale details and the property to be sold. A quarterly report is provided to the City Council explaining the disposition of any surplus vehicle and equipment sales that have occurred.

The reported sales of surplus land and buildings had been by negotiated sale. Selection of firms to conduct appraisals is exempt from the City's formal bidding requirements. The most recent

reported land sale was a part of an overall Purchase and Development Agreement with an affordable housing developer. The appraisal and other terms of the sale were a part of the agreement document and not included in the staff report to the City Council.

Findings

F3.1 The staff report for land sale to the housing developer provided very little information. The public must read through an attached long and comprehensive agreement containing many legal requirements in order to obtain basic information on land sale, such as sale price versus appraisal value.

Recommendations

R3.1 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Manteca

The Grand Jury received information and documentation from the City of Manteca in response to its survey and questionnaire. The Grand Jury determined there was not sufficient information provided so a thorough review could not be completed within the Grand Jury's time constraints. Therefore, the Grand Jury makes no findings regarding the City of Manteca's disposition of major capital assets and suggests that a future County Grand Jury conduct a thorough review of the information provided.

City of Ripon

The City of Ripon identifies sections of its Municipal Code for its authority and procedures for disposition of capital assets. Section 3.20.020 identifies a Purchasing Officer appointed by the City administrator responsible for administering the sale of all supplies and capital assets that cannot be used by other City departments. Section 3.20.070 of the Code requires a formal bidding process for sales of personal property, and Section 3.20.100 describes the formal bidding procedures for articles to be sold.

Section 3.20.110 allows the purchasing officer to sell surplus personal property with an estimated value of less than \$25,000 without first seeking sealed bids and following the formal bidding procedures.

Response to the Grand Jury's survey indicated that between 2007 and 2012 the City of Ripon had no sales of surplus land; 15 dispositions of buildings through negotiated sales; six vehicles sold through a public auction; and, one sale of major equipment through a public auction. No specific agreement with the private auction firm which conducted a vehicle sale of the City was provided.

However, City Council approval of the sale with a list of vehicles to be sold was provided. Information related to the most recent property sale during the survey period included an independent appraisal and various buyer agreements. Minutes of redevelopment agency approval of the sale were also provided.

Findings

F5.1 Ordinance No. 110 establishing provisions for purchasing and disposal of personal property and capital assets by the City of Ripon was adopted in 1958. Procedures related to the disposal are vague and do not clearly address either an adopted policy or procedure. Requirements for the sale of land and buildings are not addressed in a manner that can be easily understood by the public, nor are there clearly defined procedures.

F5.2 Staff reports at the time real property is sold do not contain sufficient information to inform the public about the proposed transaction.

Recommendations

R5.1 No later than December 1, 2013, the Municipal Code be reviewed and amended to clarify the distinction between purchase and sale of City property, and to update disposition procedures, clarifying the process for disposal of surplus vehicles and equipment.

R5.2 No later than September 30, 2013, the City adopt a contract document to be used for all sale of surplus vehicles and equipment that provides a clear indication of the fee to be paid the selling firm, protections for the City against claims resulting from the auction, liabilities and responsibilities of all parties, and other legal protections of the City's interests.

R5.3 No later than September 30, 2013, the City 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.

R5.4 Before any future disposal of land or buildings is finalized a report is provided to the City Council in open session that includes the purpose of the sale; evidence of compliance with applicable State laws; the full identity of the purchaser; the total sale price; and, if the sale price is less than the appraised value, the reason for the difference.

City of Stockton

The City of Stockton has well established procedures that are, compared to some of the other cities investigated, very comprehensive. Section 510 of the Stockton Municipal Code details the procedures to be followed for the sale or lease of real property. Section 3.60.010 of the Municipal Code describes the procedures for the sale of personal property. If the estimated sale value is over \$20,000, City Council action is required, if the values is less than \$20,000, the City manager is

authorized to undertake the sale with a report to be provided to the City Council. The City's Administrative Directive HRD-02, last reviewed in 2006, addresses the details for selling surplus real property. It includes the requirement for an independent appraisal to be conducted; the posting of a for sale sign on the property; minimum bid amounts if the property is to be sold to adjoining property owners; applicable Comprehensive Environmental Quality Act (CEQA) reviews be conducted; requirements in Government Code Section 54220 *et seq.* be adhered to; that sealed bids are required; and City Council approval is required.

Response to the Grand Jury's survey indicated that between 2007 and 2012, the City had five disposals of land, one a dedication to the State for the courthouse and four by negotiated sale; one disposal of a building by negotiated sale; 31 occasions of vehicles being sold by a private auction firm; and five sales of major equipment by a private auction firm. Documents provided by the City indicate that a comprehensive contract for the sale of vehicles through private firms was used. The contract was developed by the California Department of Justice for use by state agencies, and made available for cities to use in conducting their own sales. After the auction the private firm provided the City detailed information on the sale price of each vehicle and piece of equipment, the costs incurred by the auction firm and other relevant information about the condition of the vehicle or the sale.

The disposition of real property is handled under Administrative Directive HRD-02. The Grand Jury was informed that proposed sales of abandoned rights-of-way are noticed in a local newspaper before presented for City Council action by a resolution. A separate *Agreement for Purchase and Sale of Real Property* is written by staff and presented for council approval. The Agreement includes the sale price, obligations of both the City and the buyer, and legal protections for the City. A staff report gives the public an easily understandable summary of the requirements included in the Administrative Directive.

Findings

F6.1 Correspondence between the City and the State Department of Justice in October 2011 indicated that the State's contract agreement with private auction firms might be terminated because of state budget cuts. There was no indication if the matter has been resolved. Since the state agreement is comprehensive and benefits the City, an alternative agreement should be available for the City's use.

F6.2 Stockton Code Section 3.60.010 requires the City manager to present the City Council a report on personal property sales valued under \$20,000. There is no indication whether the report is to be a public document. A written response from the City indicated that in the past the information was included in a weekly newsletter provided to the City Council. No surplus property sales took place between 2008 and 2010; however, a sale that occurred in 2011 was not reported as required by Municipal Code. The City indicated they were in the process of updating their surplus property sale procedures.

Recommendations

R6.1 The City Council direct the City Attorney to prepare no later than November 1, 2013, a comprehensive auction agreement for use by the City.

R6.2 Effective immediately the City Manager's report on surplus personal property sales pursuant to Municipal Code Sec. 3.60.010 be prepared as a public document presented at a regular City Council meeting.

City of Tracy

The City of Tracy identified Municipal Code Section 2.20.300 (*Disposition of Real Property*) and Section 2.20.310 (*Surplus Commodities and Equipment*) as its authorization for and the process to dispose of surplus property. For disposition of real property the City Council has exempted land that remains from a larger parcel when a part of the parcel was used for street purposes, abandonments for street widening, or alignment projects when only minor amounts of land are being disposed as permitted under Government Code Section 65402(a). This section of the Municipal Code also requires disposition of real property be conducted by competitive methods unless the City Council, by resolution, determines other procedures are in the City's best interest. The City manager may approve disposal of commodities and equipment if the values is less than \$2,000; City Council approval is required if the value is more than \$2,000.

Response to the Grand Jury's survey indicated that between 2007 and 2012 the City had one sale of surplus land by direct sale to San Joaquin County; 15 sales of surplus vehicles by contract with a private auction firm; and, six sales of equipment by a private auction firm or on e-Bay. The vehicle and equipment were designated as surplus by city council action prior to sale. The sale agreement was a form prepared by a private auction firm. The land sale to the County was documented with evidence of compliance with Government Code Section 54220 *et seq.*, results of an independent appraisal; the fiscal impact of the sale; and, the purchase and sale agreement for the property. The final council action was during an open public meeting.

Findings

F7.1 The City of Tracy has no procedures manual or clearly defined procedures for the disposition of surplus vehicles and equipment. While no indications of any questionable actions were identified, the lack of clear and transparent procedures could raise concerns about the public's interest being protected.

F7.2 The agreement with the private auction firm contained limited protection for the City against claims or other possible legal actions resulting from the auction.

Recommendations

R7.1 That prior to December 1, 2013, the City adopt procedures related to the disposition of vehicles and equipment, including who is responsible for the disposal, when council approval is required, notification requirements and information made available to the public.

R7.2 That the City Council direct the City Attorney to review the current agreement used for sale of surplus vehicles and equipment to ascertain its protection of City interests, or prepare a new sale agreement to be used by the City. The City Attorney's report to and action by the City Council is to occur prior to November 1, 2013.

San Joaquin County

San Joaquin County has established its general authority for disposition of capital assets in the County's Administrative Manual Section 2700 *et seq.* Section 2711.1 of the Manual gives the County Purchasing Agent the authority in disposing of surplus personal property to use "...such methods and procedures as in his/her judgment will return the greatest value to the County." The Manual stipulates that only the Board of Supervisors and/or the Purchasing Agent may authorize the disposal of surplus personal property, and that surplus computer equipment must be disposed in a manner consistent with specific procedures last adopted in June 1997. The Purchasing Agent deposits with the County Treasurer the sale proceeds and submits a complete accounting of all transactions to the County Auditor-Controller.

Response to the Grand Jury's survey indicated that from 2007 to 2012 the County had four disposals of land, two by sealed bid and two given to the Lockeford Community Services District; three buildings were disposed of, two by sealed bid and one given to the Lockeford Community Services District; 665 vehicles were disposed of by sealed bid, negotiated sale, contract with a private auction firm, trade-in or sold as junk; and, 134 pieces of major equipment were disposed of by sealed bid, negotiated sale, contract with a private auction firm, trade-in or sold as junk.

The contracts with two private firms hired to auction the vehicles contained comprehensive details about the parties' responsibilities, liabilities and limitations, fee schedules and other protections for the County. Evidence was provided that the County reviewed the proceeds from the auction sale when the County required a private auction firm to refund monies to the County because the firm applied higher fees than permitted under contract.

In response to the Grand Jury's request for additional information the County reported on the sale of property located on N. San Joaquin Street in 2010. The Board of Supervisors first adopted Resolution R-10-440 indicating the County's intent to sell the real property giving the time and location for opening sealed bids for the property. Documents verified that Government Code 54220 *et seq.* was complied with. Notices of the intended sale were posted at the property location and in newspapers. Bids were received and opened during public session of the Board of Supervisors with interested parties being able to submit bids during the Board meeting. A separate

Board resolution was required to approve the sale. Throughout the process staff reports adequately describe what actions have occurred and what are proposed.

Findings

F8.1 There was no indication from the County materials received that a public disclosure of the results of sales of surplus vehicles and equipment was made. Unless the Board of Supervisors was the authorizing agent for the sale pursuant to the County Administrative Manual, the process is handled completely at an administrative level.

F8.2 The County indicated that it does not have a policy requiring independent appraisals of real property it sells because there is no requirement for an appraisal under the Government Code. This lack of information makes it difficult for the public to determine if the sale was in the public interest.

Recommendations

R8.1 Beginning September 30, 2013 the County Administrative Officer provide a quarterly public report to the Board of Supervisors summarizing the disposals of vehicles and equipment during the preceding quarter. The report should include the amount of revenues derived from the sales.

R8.2 No later than December 1, 2013 the County Board of Supervisors amend the County's Administrative Manual regarding procedures for disposal of surplus land and buildings to include a policy for when an appraisal of the property/building shall be required.

Conclusion

The cities and the county investigated by the Grand Jury in general provide an open and transparent process for the disposal of the public's surplus major capital assets. Most have clear policies or procedures for the public to determine if an objective process is used or favoritism is occurring. The degree of detail in these procedures varies. To help assure that the public interest is foremost in the government's actions, that transparency and disclosure will be maintained throughout the disposal of assets process, and that applicable laws are complied with, the Grand Jury has recommended actions for each jurisdiction to consider. The Grand Jury expects local governments will keep their stewardship of the public's assets at the forefront of their decisions and actions.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of San Joaquin County Superior Court within 90 days.

Specific Response Requirements:

The Escalon City Council is to respond to Findings F1.1, F1.2, F1.3 and F1.4; and Recommendations R1.1, R1.2, R1.3, R1.4 and R1.5

The Lathrop City Council is to respond to Finding F2.1 and Recommendations R2.1 and R2.2.

The Lodi City Council is to respond to Finding F3.1 and Recommendation R3.1.

The Ripon City Council is to respond to Findings F5.1 and F5.2; and Recommendations R5.1, R5.2, R5.3 and R5.4.

The Stockton City Council is to respond to Findings F6.1 and F6.2; and Recommendations R6.1 and R6.2.

Tracy City Council is to respond to Findings F7.1 and F7.2; and Recommendations R7.1 and R7.2.

The San Joaquin County Board of Supervisors is to respond to Findings F8.1 and F8.2; and Recommendations R8.1 and R8.2.

Mail a hard copy of the response to:

Honorable David P. Warner, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury at

grandjury@sjcourts.org