



Oakland City Attorney

2005 JUN -1 PM 12:48

OAKLAND CITY COUNCIL

ORDINANCE NO. 2751 C. M. S.

AN ORDINANCE AMENDING ORDINANCE NO. 12698 C.M.S. TO AUTHORIZE THE CITY ADMINISTRATOR TO 1) NEGOTIATE AND EXECUTE A REAL ESTATE EXCHANGE AGREEMENT WITH PROJECT 5110 LLC TO EXCHANGE 4,636 SQUARE FEET OF CITY-OWNED SURPLUS PROPERTIES AT 51ST STREET AND TELEGRAPH AVENUE FOR 3,114 SQUARE FEET OF PROPERTY ON AN ADJACENT LOT OWNED BY PROJECT 5110 LLC, PLUS CASH FOR THE MARKET VALUE OF APPROXIMATELY 1,522 SQUARE FEET OF PROPERTY, AND TAKE ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE EXCHANGE; 2) NEGOTIATE AND EXECUTE AN AGREEMENT DESIGNATING A PUBLIC WALKWAY/GREENBELT AREA ON THE TENTATIVE PARCEL MAP 9074 FOR A PUBLIC WALKWAY; AND 3) NEGOTIATE AND EXECUTE A MAINTENANCE AGREEMENT FOR ON-GOING MAINTENANCE OF THE WALKWAY BY PROJECT 5110 LLC OR THE CONDOMINIUM HOMEOWNERS ASSOCIATION OR DESIGNEE

WHEREAS, the City of Oakland ("City") owns a 4,636 square foot, surplus parcel of land located at 51st Street and Telegraph Avenue, (Portions of Assessor Parcel Number(s): 014-1226-008-00, 014-1226-009-01, 014-1226-007-02, 014-1226-006-02, 014-1226-005-02, 014-1226-004-03, 014-1226-003-03) identified in Exhibits "A" and "B" attached hereto (the Properties); and

WHEREAS, the Properties are remnants of the City's 51st Street Widening Project which has been completed; and

WHEREAS, a survey and appraisal have been completed that indicated that the Properties contain approximately 4,636 square feet in area and have a fair market value of \$246,000; and

WHEREAS, the Properties, being less than 5,000 square feet, are exempt from the California Surplus Lands Act (California Government Code 54220-5432), but are subject to City Ordinance No. 11602 C.M.S., covering sales of surplus City-owned property, with which the City has complied; and

WHEREAS, in July 2005, by Ordinance No. 12698 C.M.S., the City Council authorized the sale of the Properties in an AS-IS condition to Project 5110 LLC (the "Developer") for inclusion in its proposed ground floor retail and 67-unit residential condominium, mixed-use project (the "Project"); and

WHEREAS, the Properties being more than 2,500 square feet were subject to Planning Commission zoning review, and to all other procedures required under City Ordinance No. 11602, C.M.S., for sale of City-owned properties; and

WHEREAS, both the City Planning Commission and the City Council have approved the proposed mixed-use Project subject to a number of conditions, including the construction of a public walkway through a section of the Project site currently owned by the Developer; and

WHEREAS, to comply with the condition requiring a public walkway, the Real Estate Division has reached a tentative agreement with the Developer to exchange 3,114 square feet of City property for an equal amount of Developer property where the walkway will be placed, and to sell an additional 1,522 square feet to the Developer for \$53 per square foot, the fair market value; and

WHEREAS, the Developer will enter into an agreement with the City regarding the construction and ongoing maintenance of the Public Walkway/Greenbelt by the Developer, homeowners association or designee acceptable to the City.

WHEREAS, on January 18, 2006, the Planning Commission independently reviewed, considered and determined that the Project is categorically exempt from the environmental review requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15332 of the CEQA Guidelines; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that the herein-described Properties are not needed for any public purpose, are surplus to the needs of the City, the City is not required to put the properties out for competitive bidding, and the sale of the Properties to the adjoining or abutting owner is in the City's best interests.

SECTION 2. Ordinance No. 12698 C.M.S. is hereby amended to authorize an exchange and sale of the Properties to the Developer and to require that a public walkway be constructed by Developer on the property received by the City from Developer.

SECTION 3. The City Administrator, or her designee, is authorized to accept, negotiate, execute, modify and amend a Sale and Exchange Agreement, or other appropriate instrument, with Developer to dispose of the City-owned surplus properties and to accept Developer-owned, improved Public Walkway/Greenbelt property plus a sum of \$80,600, and to execute a Quitclaim Deed and any and all other documents necessary to effectuate the sale of the Property.

SECTION 4. After reimbursing Real Estate Services \$1,889 that will be placed into the City's General Purpose Fund 1010, Surplus Property Disposition Project (P47010) for administrative costs associated with the sale of the Properties for Surplus Property Program, the balance of the sale proceeds will be placed in the City's General Purpose Fund 1010, Surplus Property Disposition Project (P47010).

SECTION 5. Prior to conveyance of the City's Properties, the City and Developer will negotiate and execute a Maintenance Agreement that is reviewed and approved by the Director of Development and City Attorney's Office. The Agreement will require the Developer, the homeowners association or designee acceptable to the City to assume ongoing maintenance and associated cost responsibility for the Public Walkway/Greenbelt area.

SECTION 6: The City Administrator, or her designee, is hereby authorized to take any and all actions necessary, consistent with this Ordinance, to complete the sale and exchange of all of the Properties.

SECTION 7. The City Council independently finds and determines that the Project complies with CEQA, as the Project is categorically exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines, and the City Administrator is hereby directed to cause to be filed with the appropriate agencies, a Notice of Exemption.

SECTION 8. The Sale and Exchange Agreement, or other appropriate instrument, for the exchange and sale of the Properties shall be approved as to form and legality by the City Attorney's Office and a copy shall be filed with the Office of the City Clerk.

SECTION 9. This Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

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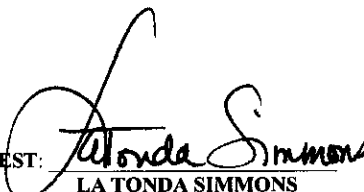
IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006
PASSED BY THE FOLLOWING VOTE:

AYES BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, KERNIGHAN, AND
 PRESIDENT DE LA FUENTE **-8**

NOES- **0**

ABSENT- **0**

ABSTENTION- **0**

ATTEST: 
LA TONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date:

JUN 20 2006

Denis

NOTICE AND DIGEST

AN ORDINANCE AMENDING ORDINANCE NO. 12698 C.M.S. TO AUTHORIZE THE CITY ADMINISTRATOR TO 1) NEGOTIATE AND EXECUTE A REAL ESTATE EXCHANGE AGREEMENT WITH PROJECT 5110 LLC TO EXCHANGE 4,636 SQUARE FEET OF CITY-OWNED SURPLUS PROPERTIES AT 51ST STREET AND TELEGRAPH AVENUE FOR 3,114 SQUARE FEET OF PROPERTY ON AN ADJACENT LOT OWNED BY PROJECT 5110 LLC PLUS CASH FOR THE MARKET VALUE OF APPROXIMATELY 1,522 SQUARE FEET OF PROPERTY, AND TAKE ALL OTHER ACTIONS NECESSARY TO EFFECTUATE THE EXCHANGE; 2) NEGOTIATE AND EXECUTE AN AGREEMENT DESIGNATING A PUBLIC WALKWAY/GREENBELT AREA ON THE TENTATIVE PARCEL MAP 9074 FOR A PUBLIC WALKWAY; AND 3) NEGOTIATE AND EXECUTE A MAINTENANCE AGREEMENT FOR ON-GOING MAINTENANCE OF THE WALKWAY BY PROJECT 5110 LLC OR THE CONDOMINIUM HOMEOWNERS ASSOCIATION OR DESIGNEE

An ordinance has been prepared amending Ordinance No. 12698 C.M.S. and authorizing the City Administrator to sell and exchange surplus City-owned properties at 51st St. and Telegraph Ave. to the adjoining property owner, Project 5110 LLC (the "Developer") for fair market value.. The City will exchange 4,636 square feet of property for 3,114 square feet of Developer's property plus \$80,660. As a condition of Project approval, the Developer, at its own cost, will construct a public walkway through the retail and residential, mixed-use development, and will maintain, or cause to be maintained, the walkway, pursuant to a Maintenance Agreement between the City and Developer.