



City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXTENSION TO AN EXISTING LICENSE AGREEMENT BY AND BETWEEN THE CITY OF OAKLAND AND BLACK CULTURAL ZONE COMMUNITY DEVELOPMENT CORPORATION, TO OPERATE A COMMUNITY SERVICE OUTDOOR MARKET ON THE PROPERTY LOCATED AT 73RD AVENUE AND FOOTHILL BOULEVARD FOR A TERM ENDING ON THE EARLIER OF OCTOBER 18, 2027, OR THE COMMENCEMENT OF CONSTRUCTION ON THE PROPERTY, FOR A LICENSE FEE OF FIVE HUNDRED DOLLARS (\$500) PER MONTH; MAKING FINDINGS THAT THE BELOW MARKET RATE LICENSE FEE IS IN THE BEST INTERESTS OF THE CITY; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland (“City”) owns a 1.22-acre parcel of land (APN 039-3291-020) located on the northwest corner of 73rd Avenue and Foothill Boulevard with an address of 7101 Foothill Boulevard, as more specifically described in the legal description attached hereto as Exhibit A (“Property”); and

WHEREAS, on July 21, 2020, the City Council adopted Resolution No. 88233 C.M.S., declaring the Property as “surplus land” pursuant to the Surplus Land Act (“SLA”), California Government Code Section 54220(b)(1), and authorizing the City Administrator to issue a Notice of Availability (“NOA”) to solicit development proposals for the disposition and development of the Property; and.

WHEREAS, on October 26, 2020, the City issued an NOA for the Property, and selected a development team including the Black Cultural Zone Community Development Corporation (“BCZ”), the Community Arts Stabilization Trust (“CAST”), and Curtis Development (“Curtis”) (collectively, the “Original Developer”), which submitted a proposal to build Liberation Park Mixed-Use Development, an affordable housing and commercial project (“Project”); and

WHEREAS, on August 25, 2021, the California Department of Housing & Community Development determined that the City met all requirements under the SLA for the purpose of disposing of the Property for development of the Project; and

WHEREAS, on February 10, 2022, the City Administrator, pursuant to Resolution No. 88873 C.M.S., dated October 19, 2021, executed that certain Exclusive Negotiating Agreement (“ENA”) between the City and the Original Developer for the proposed development of the Project; and

WHEREAS, on July 11, 2023, the City Administrator executed a First ENA Amendment to remove Curtis from the Original Developer and add Eden Housing, Inc. (“Eden”), pursuant to Section 11 of the ENA; and

WHEREAS, the Original Developer established two (2) separate entities for the development of the Project: Liberation Park Residences, L.P., an affiliate of BCZ and Eden (“Residential Developer”), for the affordable housing, and Liberation Park Market Hall, Inc., an affiliate of BCZ and CAST (“Commercial Developer”) for the commercial project; and

WHEREAS, the Commercial Developer proposes to build a free-standing market hall and arts and cultural center with an adjacent courtyard and outdoor roller-skating rink (“Commercial Project”) and the Residential Developer proposes to construct a six-story residential building with rental 119 units, 118 of which would be affordable to households with incomes ranging from 20% to 60% of Area Median Income in Alameda County (“Residential Project”); and

WHEREAS, on January 27, 2023, the City’s Planning Bureau approved the entitlements for the Project (PLN 22196) pursuant to Government Code Section 65913.4 (also known as SB 35); and

WHEREAS, the Original Developer requested that the Property be subdivided into two (2) legal Parcels: Parcel 2, comprising approximately 0.73 acres (“Parcel 2”), for development of the Residential Project, and Parcel 1, comprising approximately 0.49 acres (“Parcel 1”), for the development of the Commercial Project; and

WHEREAS, on May 24, 2023, the City Planning Bureau approved a Tentative Parcel Map to subdivide the Property into Parcel 1 and Parcel 2, which will not be recorded until execution of the Lease with the Residential Developer at closing; and

WHEREAS, on October 17, 2023, pursuant to Resolution No. 89947 C.M.S, the City Council approved a Second ENA Amendment, extending the ENA term to April 19, 2024, with one six-month administrative extension, to conclude negotiations of the transaction documents between the City and the Residential and the Commercial Developer; and

WHEREAS, the City and the Commercial Developer have negotiated proposed terms of a Disposition and Development Agreement (“DDA”) as reflected in the Term Sheet attached to the Agenda Report for this item; and

WHEREAS, concurrently with this Ordinance, City Council is considering an Ordinance to authorize a Lease Development and Disposition Agreement (“LDDA”) and ground lease with the Residential Developer to construct the Residential Project, and the Term Sheets specify that the Residential Project must begin construction before the DDA for the Commercial Project closes escrow; and

WHEREAS, BCZ is currently operating a temporary outdoor community space known as Liberation Park on the Property, which includes the popular Akoma Market, pursuant to a license agreement (“License Agreement”) with the City at the rate of five hundred dollars (\$500) per month; and

WHEREAS, the License Agreement will expire on October 18, 2024 and needs to be extended in order for the outdoor park and market to continue until construction begins on the Residential Project; and

WHEREAS, pursuant to Oakland Municipal Code Section 2.42.110, City-owned real property must be licensed or leased for a rent or fee, payable in cash or other consideration, equal to or exceeding the property’s fair market value, unless the City Council determines that the license or lease of the property for less than its fair market value is in the best interest of the City; and

WHEREAS, in the case of licensees or lessees who provide in-kind services in lieu of cash rent, the value of such in-kind services to the City or the community at large may be considered in making the required Council finding and determination. In-kind services include benefits or values the provider renders to the City or the community at large as a result of the tenancy in lieu of payment of cash, including, but not be limited to, property security and maintenance, social and cultural benefits to the community, or other appropriate services; and

WHEREAS, the continued operation of the Liberation Park market and community hub at below-market rent is in the best interest of the City because it will create a positive community gathering space, activate an otherwise vacant site, and allow the City to avoid security and maintenance expenses until the Property is ready for development; and

WHEREAS, extension of the License term for the continued operation of the market on the Property is exempt from the California Environmental Quality Act (“CEQA”) under CEQA Guidelines Section 15301 (Existing Facilities); Section 15303 (Small Structures); Section 15183 (Projects consistent with a Community Plan, General Plan or Zoning); Section 15183.3 (Streamlining for Infill Projects); Section 15601(b)(3) (Common Sense Exemption); and Section 15332 (In-Fill Development Projects);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Administrator is hereby authorized to negotiate and execute a license agreement with Black Cultural Zone Community Development Corporation to operate a community service outdoor market on the Property located at 73rd Avenue and Foothill Boulevard for a term ending on the earlier of October 18, 2027 or the commencement of construction on Parcel 2 for a license fee of Five Hundred Dollars (\$500) per month.

SECTION 2. The City Council finds and determines that the license of the Property for less than its fair market rental value is in the best interests of the City pursuant to Oakland Municipal Code Section 2.42.110, because it will create a positive community gathering space, activate an otherwise vacant site, and allow the City to avoid security and maintenance expenses until the Property is ready for development.

SECTION 3. The license fees will be accepted and deposited into City Entity (1), Central City East TA Bond Series 2006A-T Fund (5643), CIP Central City East Organization (94899), Other Rental: Miscellaneous Revenue Account (44419), 73rd and Foothill Development Land Sale Project (1003729), Central City East Program (SC18).

SECTION 4. The City Council hereby finds and determines that the extension of the License term for the continued operation of the market on the Property is exempt from CEQA under CEQA Guidelines Section 15301 (Existing Facilities); Section 15303 (Small Structures); Section 15183 (Projects consistent with a Community Plan, General Plan or Zoning); Section 15183.3 (Streamlining for Infill Projects); Section 15601(b)(3) (Common Sense Exemption); and Section 15332 (In-Fill Development Projects).

SECTION 5. The license agreement is subject to City Attorney review and approval for form and legality, and a copy of this Ordinance shall be filed with the City Clerk without returning to Council.

SECTION 6. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase there of irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 8. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk of the Council and City of
Oakland, California

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXTENSION TO AN EXISTING LICENSE AGREEMENT BY AND BETWEEN THE CITY OF OAKLAND AND BLACK CULTURAL ZONE COMMUNITY DEVELOPMENT CORPORATION, TO OPERATE A COMMUNITY SERVICE OUTDOOR MARKET ON THE PROPERTY LOCATED AT 73RD AVENUE AND FOOTHILL BOULEVARD FOR A TERM ENDING ON THE EARLIER OF OCTOBER 18, 2027, OR THE COMMENCEMENT OF CONSTRUCTION ON THE PROPERTY, FOR A LICENSE FEE OF FIVE HUNDRED DOLLARS (\$500) PER MONTH; MAKING FINDINGS THAT THE BELOW MARKET RATE LICENSE FEE IS IN THE BEST INTERESTS OF THE CITY; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance would authorize the City Administrator to extend an existing license agreement by and between the City of Oakland and Black Cultural Zone Community Development Corporation to operate a community service outdoor market on the City-owned property located at 73rd Avenue and Foothill Boulevard for a term ending on the earlier of October 18, 2027 or the commencement of construction of an affordable housing project on a portion of the property, for a license fee of Five Hundred Dollars (\$500) per month. The Ordinance makes findings that the license fee, which is below the fair market rental value for the property, is in the best interest of the City, and that no further environmental review is required under CEQA.