

  
Carlos Ortiz (JUL 17, 2023 11:27 PDT)

CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE:**

- (1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE WITH EAST BAY COMMUNITY ENERGY (EBCE), A NOT-FOR-PROFIT JOINT POWERS AUTHORITY (JPA), A MASTER SITE LICENSE AGREEMENT TO INSTALL AND OPERATE ELECTRIC VEHICLE FAST CHARGING INFRASTRUCTURE FOR A COMMERCIAL OPERATION TERM OF FIFTEEN (15) YEARS EACH NOT TO EXCEED JULY 30, 2040, AT A RATE OF ZERO DOLLARS (\$0.00) PER YEAR AND SUBJECT TO POTENTIAL EARLY TERMINATION DAMAGES FOR THE FOLLOWING MUNICIPAL FACILITIES:**

  - A. PIEDMONT LOT LOCATED AT 4050 HOWE STREET;**
  - B. DIAMOND LOT LOCATED AT 3400 DIMOND AVENUE; AND**
  - C. GRAND AVENUE LOT LOCATED AT 3270 GRAND AVENUE;**
- (2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE WITH EBCE A SITE LICENSE AGREEMENT FOR THE CITY CENTER WEST GARAGE LOCATED AT 1250 MARTIN LUTHER KING JUNIOR WAY PURSUANT TO RESOLUTION NO. 88855 C.M.S.;**
- (3) MAKING FINDINGS THAT THE LICENSES FOR A BELOW FAIR MARKET VALUE ARE IN THE BEST INTEREST OF THE CITY;**
- (4) DECLARING SUCH MUNICIPAL FACILITIES AS EXEMPT SURPLUS LAND UNDER THE STATE SURPLUS LAND ACT; AND**
- (5) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS.**

**WHEREAS**, in July 2020 the City Council adopted the 2030 Equitable Climate Action Plan (ECAP) (Resolution No. 88627 C.M.S.) which establishes actions that the City and its partners will take to equitably reduce Oakland's climate emissions 56 percent by 2030 compared to 2005 emissions and adapt to a changing climate; and

**WHEREAS**, the City Council adopted the Zero Emission Vehicle Action Plan in January 2023, which establishes the City’s roadmap to reduce greenhouse gas (GHG) emissions from transportation and support a transition to 100 percent zero-emission vehicles by 2035 and target of carbon neutrality by 2045; and

**WHEREAS**, potential electric vehicle (EV) drivers in Oakland may be discouraged from buying or leasing EVs due to the unavailability of publicly available fast charging stations; and

**WHEREAS**, the State of California has set the goal of placing 1.5 million zero-emission vehicles on California roads by 2025 and 5 million by 2030; and

**WHEREAS**, Governor Gavin Newsom signed Executive Order N-79-20 in 2020, mandating that 100 percent of new in-state light duty passenger vehicles sales are zero-emission by 2035; and

**WHEREAS**, the East Bay Community Energy Authority (EBCE) 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 EBCE and parties to the Joint Powers Authority (JPA) in March of 2020; and

**WHEREAS**, EBCE is a not-for-profit JPA and load serving entity with the expertise and desire to install EV fast charging stations at municipal facilities in Oakland, and such infrastructure would accomplish significant climate and social benefits by providing convenient and accessible EV fast charging to a large population of multifamily building dwellers and commuters traveling through downtown and West Oakland; and

**WHEREAS**, EBCE proposes to install and operate EV fast charging infrastructure at the following municipal facilities—City Center West Garage (1250 Martin Luther King Junior Way); Piedmont Lot (4050 Howe Street); Diamond Lot (3400 Dimond Avenue); and Grand Avenue Lot (3270 Grand Avenue); and

**WHEREAS**, the City Council authorized the execution of a site license agreement at the City Center West Garage pursuant to Resolution No. 88855 C.M.S. on October 19, 2021; and

**WHEREAS**, based on review of the plans and evaluation of each of the four (4) municipal facilities, the project will not interfere with public use of the parking garages or lots, will not endanger the public welfare and convenience, and will not negatively impact the City’s goal of housing production since none of the sites are listed in the City’s Sites Inventory of its 2023 to 2031 Housing Element, adopted on January 31, 2023, pursuant to Resolution No. 89565 C.M.S; and

**WHEREAS**, none of the proposed municipal facility sites are listed in the Sites Inventory of the City’s 2023 to 2031 Housing Element, and as such this action will not result in fewer units by income category than identified in the City’s Housing Element; and

**WHEREAS**, as a result the City need not make a “no net loss” finding establishing that the remaining sites are adequate to accommodate the City’s share of the regional housing need by income level in compliance with California Government Code section 65863 and the City’s Housing Element; and

**WHEREAS**, in Section 219(6) of the Charter, the license or lease of City-owned real property by the City for longer than one year must be authorized by an ordinance enacted by the City Council pursuant to Oakland Municipal Code Section (OMC) 2.42.100; and

**WHEREAS**, pursuant to OMC Section 2.42.110, City-owned real property must be licensed or leased for rent or a 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**, EBCE will provide charging infrastructure to the City at no cost, which will advance transportation and climate goals and would otherwise cost the City approximately \$1.45 million per location to execute; and

**WHEREAS**, users of the EV chargers will pay for the electricity they use but will not have to pay for the first sixty minutes of their parking session if they are connected to the EV charger for the purposes of charging an electric vehicle; and

**WHEREAS**, EBCE will issue a competitive Request for Proposals/Qualifications (RFP/Q) for vendor services to construct, operate and maintain its EV fast charging infrastructure; and

**WHEREAS**, the City will license the four identified municipal sites to EBCE to provide EV fast charging infrastructure in Oakland and such use satisfies the criteria of “exempt surplus land,” defined as “surplus land that a local agency is transferring to another local, state, or federal agency for the agency’s use, or to a federally recognized California Indian tribe” pursuant to Government Code Section 54221(f)(1)(D); and

**WHEREAS**, the proposed installation of EV fast charging infrastructure on the identified municipal sites are exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15301 (existing facilities), 15307 (protection of natural resources), 15308 (protection of the environment), 15183 (projects consistent with General Plan and Zoning), and 15061(b)(3) (no significant effect on the environment); and

**WHEREAS**, the City desires to enter into a master site license agreement with EBCE in accordance with these terms; and

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

**SECTION 1.** That the City Administrator is hereby authorized to negotiate and execute a master site license agreement with EBCE, a not-for-profit JPA, for the installation, operation, and maintenance of its EV fast charging stations at no cost to the City for a commercial operation term of fifteen (15) years each not to exceed July 30, 2024, at a below market rent rate of Zero Dollars (\$0.00) per year and subject to potential early termination damages at the following City of Oakland municipal facilities:

- (1) Piedmont Lot at 4050 Howe Street (APN 1: 12-993-4; APN 2: 12-993-5; APN 3: 12-993-6-1);
- (2) Diamond Lot at 3400 Dimond Avenue (APN 1: 26-836-11-2; APN 2: 26-836-13; APN 3: 26-836-14-1; APN 4: 26-836-14-2; APN 5: 26-836-15); and
- (3) Grand Avenue Lot at 3270 Grand Avenue (APN 1: 11-836-16; APN 2: 11-836-29-1).

**SECTION 2.** The City Council finds and determines that the license of the four identified municipal facilities for less than its fair market rental value is in the best interests of the City pursuant to OMC Section 2.42.110, because (1) EBCE will install, operate, and maintain EV fast charging infrastructure at no cost to the City and would otherwise cost the City approximately \$1.45 million per location or approximately \$4.23 million total; (2) EBCE will strive to create work development opportunities for Oakland residents and small local businesses; and (3) providing EV fast charging stations in Oakland will advance the City’s 2030 Equitable Climate Action Plan and Zero Emission Vehicle Action Plan and the State’s transportation and climate goals.

**SECTION 3.** The City Council finds and declares that such municipal facilities meet the criteria of “exempt surplus land,” because the City is licensing the identified sites to EBCE as a not-for-profit JPA for its use to install and maintain EV fast charging stations for the surrounding community, commuters, and visitors pursuant to Government Code Section 54221(f)(1)(D) of the Surplus Land Act.

**SECTION 4.** The City Council finds and declares that none of the proposed municipal facility sites are listed in the Sites Inventory of the City’s 2023 to 2031 Housing Element, and as such this action will not result in fewer units by income category than identified in the City’s Housing Element. As a result, the City need not make a “no net loss” finding establishing that the remaining sites are adequate to accommodate the City’s share of the regional housing need by income level in compliance with California Government Code section 65863 and the City’s Housing Element.

**SECTION 5.** The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines that the project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15183 (projects consistent with a Community Plan, General Plan, or Zoning), and 15061(b)(3) (no

significant effect on the environment), 15301 (existing facilities), 15307 (protection of natural resources) and 15308 (protection of the environment). The City The City Administrator or designee is hereby directed to file a Notice of Exemption with the appropriate agencies.

**SECTION 6.** The City Council hereby authorizes the City Administrator to enter into further agreements and take whatever action is necessary to enter into the Master Site License Agreement that is the subject of this Ordinance.

**SECTION 7.** That the Master Site 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 8.** That the City Council hereby authorizes the City Administrator to execute a Site License Agreement with EBCE for the installation, operation, and maintenance of its EV fast charging stations at no cost to the City for a commercial operation term of fifteen (15) years at a below market rent rate of Zero Dollars (\$0.00) per year for the City Center West Garage located at 1250 Martin Luther King Junior Way (APN: 2-27-6-9) pursuant to Resolution No. 88855 C.M.S. adopted on October 19, 2021.

**SECTION 9.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 10. 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 thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional

**SECTION 11. 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 and Clerk of the Council of the  
City of Oakland, California

Date of Attestation: \_\_\_\_\_

## NOTICE AND DIGEST

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  - A. PIEDMONT LOT LOCATED AT 4050 HOWE STREET;**
  - B. DIAMOND LOT LOCATED AT 3400 DIMOND AVENUE; AND**
  - C. GRAND AVENUE LOT LOCATED AT 3270 GRAND AVENUE;**
- (2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE WITH EBCE A SITE LICENSE AGREEMENT FOR THE CITY CENTER WEST GARAGE LOCATED AT 1250 MARTIN LUTHER KING JUNIOR WAY PURSUANT TO RESOLUTION NO. 88855 C.M.S.;**
- (3) MAKING FINDINGS THAT THE LICENSES FOR A BELOW FAIR MARKET VALUE ARE IN THE BEST INTEREST OF THE CITY;**
- (4) DECLARING SUCH MUNICIPAL FACILITIES AS EXEMPT SURPLUS LAND UNDER THE STATE SURPLUS LAND ACT; AND**
- (5) MAKING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.**

This Ordinance authorizes the City Administrator to negotiate and execute a master site license agreement with East Bay Community Energy (EBCE), a not-for-profit Joint Powers Authority (JPA), to install and operate electric vehicle fast charging infrastructure at three locations: Piedmont Lot at 4008 Howe Street, Diamond Lot at 3400 Dimond Avenue, and Grand Avenue Lot at 3270 Grand Avenue for a commercial operation term of fifteen (15) years each not to exceed July 30, 2040 and subject to potential early termination damages. This Ordinance also authorizes the City Administrator to negotiate and execute with EBCE a site license agreement for the City Center West Garage located at 1250 Martin Luther King Junior Way pursuant to Resolution No. 88855 C.MS. This Ordinance also makes findings that the license for a below fair market value of Zero Dollars (\$0.00) per year is in the best interest of the City. Finally, this Ordinance declares these three parking facilities as exempt surplus land; confirms that none of the sites are required for housing in the City's Sites Inventory of its 2023 to 2031

Housing Element; and makes appropriate California Environmental Quality Act (CEQA) findings.