

DRAFT

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER LOREN TAYLOR

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE THE REMOVAL, AMENDMENT, OR WAIVER OF RESTRICTIONS IMPOSED ON THE CITY-OWNED 7101 FOOTHILL BOULEVARD PARCEL (APN 039-3291-020) THAT RESTRICTS OCCUPANCY BY RESTAURANTS THAT COMPETE WITH MCDONALDS AND TACO BELL IN ORDER TO SIGNIFICANTLY FURTHER ECONOMIC DEVELOPMENT AND AFFORDABLE HOUSING IN EAST OAKLAND

WHEREAS, in October 2008 the former Oakland Redevelopment Agency (Agency) executed an agreement of purchase and sale with East Oak Land Associates, LLC, for an approximately 1.22 acre parcel of land located on the northwest corner of 73rd Avenue & Foothill Boulevard, Oakland, California (APN 039-3291-020) (Property) within the Eastmont neighborhood in Council District 6 for \$2,214,755 pursuant to Agency Resolution No. 2008-0063; and

WHEREAS, the Property abuts the Eastmont Town Center and is adjacent to AC Transit's Eastmont Transit Center and was originally part of an old Chevrolet auto assembly plant from 1916 to 1963, and in 2010, the City demolished the Firestone tire center that was on the site; and

WHEREAS, over the next decade, the City explored several mixed use and commercial development proposals for the Property, including an education center shared with a new public library branch, and a Peralta Community College District satellite campus for Merritt College, and a retail center anchored by a Starbucks community store with dedicated classrooms for local nonprofits to conduct job-skills training classes for youth; and

WHEREAS, due to financial infeasibility or restrictions related to food operations on the Property, none of the prior development proposals advanced; and

WHEREAS, the Property is specifically burdened by a restriction or covenant not to compete that benefits McDonald's Corporation, a Delaware corporation (McDonald's) and its franchise located at 7300 Bancroft Avenue in the Eastmont Town Center, and the covenant prohibits restaurants and the sale of any food item on the Property due to a ground lease between McDonald's and Eastmont Town Center Company, LLC (Eastmont) pursuant to a recorded

Document No. 99272514 by the Alameda County Recorder dated July 13, 1999 and recorded on July 23, 1999 (Attachment 1); and

WHEREAS, McDonald's does not apply the restriction to the food court inside the Eastmont Town Center and any pad site with frontage on Bancroft Avenue; and

WHEREAS, on September 20, 2000, McDonald's amended its covenant not to compete and waived the restriction with respect to a southern style sit down restaurant and bakery located at 2901 68th Street, Oakland, Oakland provided that the restaurant does not sell any hamburgers (Attachment 2); and

WHEREAS, the Property is also currently burdened by a restriction not to compete that benefits Doolan Foster Enterprises, Inc., dba Taco Bell (Taco Bell) and its franchise located at 6900 Bancroft Avenue in the Eastmont Town Center pursuant to a ground lease between Eastmont Building Associates and Taco Bell, and the covenant prohibits the Property be used for a food outlet selling more than Ten Percent (10%) Mexican style food; and

WHEREAS, the Taco Bell restriction does not apply to a lease with El Pollo Loco nor any lease for retail restaurant use within the food court of the Eastmont Town Center mall; and

WHEREAS, on April 18, 2017, the City Council authorized a prior Exclusive Negotiating Agreement (ENA) with Portfolio Development Properties LLC, or related affiliates, for one year, with one optional six-month administrative extension, for the potential disposition and development of a retail project on the City-owned Property pursuant to Resolution No. 86688 C.M.S.; and

WHEREAS, due to the McDonald's and Taco Bell restrictions that restrict occupancy on the Property by restaurants that compete, the proposed economic development of the site for use by Starbucks Coffee as a retail store and youth training center where local nonprofits would be able to conduct job-skills training classes for youth pursuant to the 2017 ENA was not realized; and

WHEREAS, in April 2020, the City activated the Property through a license agreement with the Black Cultural Zone Collaborative, a partnership of more than 20 local nonprofits that together established and manage what is currently known as Liberation Park and brings a variety of services to the Eastmont neighborhood, including the Akoma Outdoor Market, free meals distributed by the World Central Kitchen, COVID-19 testing by Umoja in Health; and

WHEREAS, on July 21, 2020, the City Council declared the Property to be surplus land under the California Surplus Land Act (Government Code sections 54220 et seq.) (SLA) and authorized the City Administrator to commence actions to comply with the SLA; and

WHEREAS, the City completed a 90-day SLA negotiating period for the Property, and State HCD official determined the City has fully complied with the SLA requirements for eventual disposition of the Property; and

WHEREAS, on October 19, 2021, the City Council authorized an ENA with the Black Cultural Zone Community Development Corporation (BCZ) in partnership with Community Arts Stabilization Trust, Curtis Development and/or their affiliated entities for eighteen (18) months,

with one additional six (6) month administrative extension, for the future disposition of the Property, subject to the completion of a California Environmental Quality Act (CEQA) pursuant to Resolution No. 88873 C.M.S.; and

WHEREAS, the removal of restrictions prohibiting restaurants would enable the proposed affordable housing and commercial mixed-use development , which includes a Market Hall use that would serve food on the Property, and in doing so potentially add an estimated 45 permanent jobs, significantly furthering economic development and affordable housing in East Oakland; and

WHEREAS, both McDonald’s and Taco Bell have previously authorized exceptions to their respective restrictions against competing restaurants, and a similar exception for the Property is in the public interest; and

WHEREAS, on August 26, 2021, McDonald’s denied the City’s request to waive or otherwise the permit the sale of any food item prohibited by the covenant or restriction (Attachment 3); and

WHEREAS, due to the McDonald’s and Taco Bell continued restrictions that restrict occupancy on the Property by restaurants that compete, the proposed development of the site as a food serving and food preparing Market Hall site pursuant to the 2021 ENA is impacted; now, therefore, be it

RESOLVED: That City Administrator is authorized to negotiate the removal, amendment, or waiver of restrictions imposed on the City-owned 7101 Foothill Boulevard parcel (APN 039-3291-020) that restricts occupancy by restaurants that compete with McDonald’s and Taco Bell in order to significantly further economic development and affordable housing in East Oakland; and be it

FURTHER RESOLVED: That City Council hereby authorizes the City Administrator, without returning to City Council, to negotiate and execute (a) such other additions, amendments or other modifications to the foregoing document that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Resolution, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (b) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate and consummate the transactions in accordance with this Resolution, or to otherwise effectuate the purpose and intent of this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

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