

**ORDINANCE NO. 22-\_\_**

**An Ordinance Of The City Council Of The City Of Emeryville Approving And Authorizing The City Manager To Enter Into And Execute A Lease Disposition And Development Agreement Between The City Of Emeryville And EAH, Inc. And Related Ground Lease For The Development And Operation Of An Intergenerational Affordable Housing Project At 4300 And 4310 San Pablo Avenue, Emeryville, California (APN 049-1079-014-01 And 049-1079-017-01) And Authorizing The City Manager To Take Action To Effectuate The Lease Disposition and Development Agreement And Related Ground Lease (CEQA Status: Exempt Pursuant To State CEQA Guidelines Sections 15194 and 15332)**

**WHEREAS**, the City owns the property located at 4300 and 4310 San Pablo Avenue ("Site"); and

**WHEREAS**, on September 24, 2019, the City issued a Request for Qualifications and Proposals ("RFQ/P") for the development of an affordable senior or intergenerational affordable housing project at the Site; and

**WHEREAS**, EAH, Inc. ("Developer") submitted a timely response to the RFQ/P, which response proposed the construction of a 68-unit intergenerational affordable housing project (the "Project"); and

**WHEREAS**, on July 21, 2020, the City Council adopted Resolution No. 20-85 selecting Developer as the first-choice developer for the Project and authorizing the City Manager to execute an Exclusive Right to Negotiate Agreement ("ERN") with Developer; and

**WHEREAS**, pursuant to Resolution No. 20-85, the City and the Developer entered into an ERN on October 29, 2020, which provided for an initial negotiation period of 180 days, with a permitted extension of an additional 180 days that was utilized by the City and Developer; and

**WHEREAS**, on October 19, 2021 the City Council adopted Resolution No. 21-109 authorizing a further extension of the ERN for an additional 90 days with a permitted extension of an additional 180 days that was utilized by the City and Developer to allow the City and the Developer to negotiate the terms of a Lease Disposition and Development Agreement and Ground Lease for the construction and operation of the Project; and

**WHEREAS**, before the final approval of this Ordinance, the City Council will receive a General Plan Conformity Report for the Project from the Planning Commission; and

**WHEREAS**, the City and Developer desire to enter into the Lease Disposition and Development Agreement ("LDDA") and, pursuant to Government Code section 37380, the Ground Lease, attached to this Ordinance as Exhibit A, for the construction and operation of the Project.

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

**SECTION ONE. TITLE**

This Ordinance shall be known as the “4300 San Pablo Avenue Lease Disposition and Development Agreement and Ground Lease Ordinance.”

**SECTION TWO. FINDINGS AND PURPOSES DECLARATION**

The purpose of this ordinance is to facilitate the development of an intergenerational affordable housing project on City-owned property located at 4300 and 4310 San Pablo Avenue, Emeryville, California. The development is to provide affordable housing for transition-aged youth and senior households and space for resident services and programming. The City Council finds that, by awarding the LDDA and Ground Lease to Developer, the City will facilitate the development of an affordable housing project that furthers the City’s policies relating to increasing the production of affordable housing.

**SECTION THREE. APPROVAL AND AUTHORIZATION TO EXECUTE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND GROUND LEASE**

The City Council hereby approves and authorizes the City Manager to execute and enter into a LDDA that is substantially the same form as the LDDA attached hereto as Exhibit A. The City Council hereby approves and authorizes the City Manager to execute and enter into a Ground Lease for a total term of 75 years, that is in substantially the same form as the Ground Lease attached as Exhibit G to the LDDA, provided the terms and conditions precedent to execution of the Ground Lease as set forth in the LDDA executed by the parties are satisfied.

**SECTION FOUR. APPROVAL AND AUTHORIZATION TO EXECUTE AGREEMENTS**

The City Council hereby approves and authorizes the City Manager to execute and enter into agreements necessary to implement the LDDA and the Ground Lease with Developer.

**SECTION FIVE. APPROVAL AND AUTHORIZATION TO EXECUTE AMENDMENTS**

- A) Minor Amendments: The City Council hereby authorizes the City Manager to execute and enter into amendments to the LDDA and Ground Lease with Developer as may be agreed to by the City Manager and approved as to form by the City Attorney that do not materially increase the obligations of the City thereunder.

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- B) Major Amendments: For any amendments not characterized as Minor Amendments pursuant to Section 5(A) of this ordinance, the City Council is authorized to approve any such amendments to the LDDA and Ground Lease by a resolution of the City Council.

## **SECTION SIX. CEQA DETERMINATION**

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15194 of the CEQA Guidelines as an Affordable Housing Project because the Project meets the criteria of Section 15192 of the CEQA Guidelines, the Site is less than 5 acres, the Site is located within an urbanized area, the site has been previously developed for a qualified urbanized use the Project is fewer than 100 units and the Project will be subject to a recorded affordability covenant ensuring the continued availability and use of the housing as affordable housing for at least 30 years. The adoption of this ordinance is also exempt from CEQA pursuant to Section 15332 governing infill development projects because (i) the project is consistent with the Emeryville General Plan and Planning regulations, (ii) the development will be constructed on a site of no more than 5 acres (the Site is approximately .47 acres) and is surrounded by urban uses, (iii) the Site has no value as habitat for endangered, rare or threatened species, (iv) approval of the project will not result in any significant effects relating to traffic, noise, air quality or water quality, and (v) the Site is adequately served by all required utilities and public service.

## **SECTION SEVEN. SEVERABILITY**

Every section, paragraph, clause, and phrase of this ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

## **SECTION EIGHT. EFFECTIVE DATE**

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

## **SECTION NINE. CODIFICATION**

This ordinance shall NOT be codified.

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This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, Tuesday, July 19, 2022, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, September 6, 2022 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

DocuSigned by:

*Christie Crowl*

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\_\_\_\_\_  
SPECIAL COUNSEL

## ATTACHMENTS

Exhibit A: Lease Disposition and Development Agreement with EAH, Inc.