

MEMORANDUM

DATE: June 20, 2017

TO: Mayor Scott Donahue and City Council and Successor Agency

FROM: Michael A. Guina, City Attorney

SUBJECT: RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE TRANSFERRING THE CORPORATION YARD REAL PROPERTY ASSET LOCATED AT 5679 HORTON STREET TO THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY PURSUANT TO CALIFORNIA HEALTH & SAFETY CODE SECTION 34167.5

RESOLUTION OF THE CITY OF EMERYVILLE AS SUCCESSOR AGENCY TO THE EMERYVILLE REDEVELOPMENT AGENCY ACCEPTING THE TRANSFER OF THE CORPORATION YARD REAL PROPERTY ASSET LOCATED AT 5679 HORTON STREET FROM THE CITY OF EMERYVILLE PURSUANT TO CALIFORNIA HEALTH & SAFETY CODE SECTION 34167.5

BACKGROUND

On March 4, 2011, the former Emeryville Redevelopment Agency ("Agency") transferred its interest in the Corporation Yard site, located at 5679 Horton Street, to the City of Emeryville ("City"). On June 28, 2011, Governor Brown signed AB X1 26 (the "Dissolution Act") into law. Immediately thereafter the California Redevelopment Association filed suit directly with the California Supreme Court challenging the constitutionality of the Dissolution Act. Thereafter, on December 29, 2011, in California Redevelopment Association v. Matosantos, (2011) 53 Cal. 4th 231, the Court upheld the constitutionality of the Dissolution Act which dissolved all of the redevelopment agencies in California effective February 1, 2012.

Health and Safety Code Section 34167.5 of the Dissolution Act obligated the State Controller to review the activities of redevelopment agencies in the state to determine whether an asset transfer, such as the transfer of the Corporation Yard site, has occurred after January 1, 2011, between a city that created a redevelopment agency, and the redevelopment agency. If an asset transfer did occur during that time period, and the City is not contractually committed to a third party for the expenditure or encumbrance of the asset, then to the extent not prohibited by state or federal law, the Controller shall order the available assets to be returned to the Successor Agency. While the transfer of the Corporation Yard in March 2011 was completely legal at the time it was made, in enacting the Dissolution Act the State Legislature determined, with retroactive effect, that such transfers occurring after January 1, 2011 were not in furtherance of the Community Redevelopment Law and thus unauthorized.

On April 20, 2012, the State Controller did in fact issue such an order to the City. While the Dissolution Act did allow for the transfer of real property assets by the Successor Agency to the City in certain circumstances, and several real property assets were in fact properly transferred by the Successor Agency to the City, the Corporation Yard site was not included on

the list of parcels approved to be transferred to the City. Similarly, the Corporation Yard site has not previously been returned to the Successor Agency in accordance with the State Controller's order. Thus, the purpose of this item is to return fee title to the Corporation Yard site to the Successor Agency in compliance with the State Controller's order.

DISCUSSION

On February 15, 2011, the City and Agency approved an Amended and Restated Public Improvement Reimbursement Agreement, a Public Improvement Option Agreement, and a Purchase Agreement related to the transfer of non-housing real property assets of the Agency to the City, as well as the pledge of tax increment funds of the Agency to the City. At that time the City and Agency were aware of the Governor's planned efforts to eliminate redevelopment agencies in the State of California, and these agreements were an effort to allow planned redevelopment activities on those non-housing real property assets to be completed by the City with the use of redevelopment funds. However, the Governor was alert to what Emeryville and local agencies throughout the State were doing and hence the Dissolution Act retroactively invalidated these efforts.

Pursuant to the Public Improvement Option Agreement and the Purchase Agreement the following twelve (12) non-housing real property assets were transferred by the Agency to the City in March 2011:

- Horton Landing Park (Park/Open Space Land Use)
- 48th St Community Garden (Park/Open Space Land Use)
- Christie Ave Park (Park/Open Space Land Use)
- Doyle Hollis Park (Park/Open Space Land Use)
- Child Development Center (Medium Density Residential Land Use)
- Greenway @ 59th (Park/Open Space Land Use)
- Greenway @ Parcel D (Park/Open Space Land Use)
- Art & Cultural Center (Public Land Use)
- Recreation Center (Mixed Use with Residential/Neighborhood Retail Overlay Land Use)
- City Hall Parking Lot (Public Land Use)
- Shellmound Street Lot (Mixed Use with Residential/Regional Retail Overlay Land Use)
- South Bayfront Site B (Mixed Use with Residential/Regional Retail Overlay Land Use)

Further, pursuant to a Purchase and Sale Agreement dated as of June 4, 2009, the Redevelopment Agency similarly transferred the Corporation Yard site (Public Land Use) to the City on March 4, 2011.

The only non-housing real property assets owned by the Agency that were not transferred to the City in March 2011 were the following seven (7) parcels that had been acquired by the Agency for street, pedestrian and railway right of way purposes.

- Shellmound Street right of way
- 40th Street at Hollis Street right of way
- portion of 40th Street Overcrossing

- portion of Stanford Avenue
- sliver along Terraces for AMTRAK rail line
- portion of 59th Street
- Amtrak Bridge West Tower

Impact of Dissolution of the Redevelopment Agency on Property Transfers

With the enactment of the Dissolution Act, on January 17, 2012, the City Council adopted Resolution No. 12-12 electing to have the City serve as Successor Agency to the Emeryville Redevelopment Agency (“Successor Agency”). The Successor Agency is charged with winding down the affairs of the former Redevelopment Agency.

Health and Safety Code Section 34171 (d)(2) provides that an enforceable obligation does not include an agreement between the City and its Redevelopment Agency. Accordingly, the Amended and Restated Public Improvement Reimbursement Agreement, Public Improvement Option Agreement, and Purchase Agreement approved on February 15, 2011, as well as the Purchase and Sale Agreement of June 4, 2009 for the Corporation Yard site are not enforceable pursuant to the Dissolution Act.

Further, Health and Safety Code Section 34167.5 obligated the State Controller to review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between a city or county, or city and county that created a redevelopment agency, and the redevelopment agency. If an asset transfer did occur during that time period, and the City is not contractually committed to a third party for the expenditure or encumbrance of those assets, then to the extent not prohibited by state or federal law, the Controller shall order the available assets to be returned to the City as Successor Agency. On April 20, 2012, the State Controller did in fact issue such an order the City of Emeryville.

Transfer of Certain Non-Housing Real Property Assets “Constructed and Used for Governmental Purpose” Perfected

Notwithstanding the State Controller’s order, with respect to a non-housing real property asset, Health and Safety Code Section 34181 provides that certain “governmental purpose” assets can be transferred by the Successor Agency to the City with the approval of the Emeryville Oversight Board. On June 12, 2012, the Emeryville Oversight Board adopted Resolution No. OB06-12 directing the Successor Agency to transfer to the City certain non-housing real property assets which have been “constructed and used for a governmental purpose”. The following real property assets approved for transfer to the City included all seven (7) of the aforementioned right of way parcels and five (5) of the twelve (12) parcels that were invalidly transferred in March 2011:

- Christie Ave Park – Park/Open Space Land Use
- Doyle Hollis Park – Park/Open Space Land Use
- Child Development Center – Medium Density Residential Land Use
- Recreation Center – Mixed Use w/ Residential – Neighborhood Retail Overlay
- City Hall Parking Lot – Public Land Use
- Shellmound Street right of way – Public Street

- 40th Street at Hollis Street right of way – Public Street
- portion of 40th Street Overcrossing – Public Street
- portion of Stanford Avenue – Public Street
- sliver of land along the Union Pacific Railroad main line – Public Right of Way
- portion of 59th Street – Public Street
- Amtrak Bridge west tower – Public Right of Way

A copy of Resolution No. OB06-12 was transmitted to the State Department of Finance, State Controller and the Alameda County Auditor Controller and neither of them questioned or objected to these transfers of non-housing real property assets.

Return of Non-Housing Real Property Assets By City to Successor Agency Pursuant to Due Diligence Review and State Controller's Order

As part of the Dissolution Act the Successor Agency was also required to hire an accountant to undertake a due diligence review of its funds to determine the unobligated balances of the Successor Agency available for transfer to the various taxing entities. More specifically Section 34179.5(c)(2) provides that the due diligence review shall determine the dollar value of assets transferred after January 1, 2011 through June 30, 2012 by the Agency to the City, and in determining the amount of “net balances available” for transfer to the taxing entities, Section 34179.5(c)(6) provides that the value of assets identified pursuant to 34179.5(c)(2) that were transferred without the benefit of an enforceable obligation shall be added to the amount the Successor Agency must transfer to the taxing entities.

As noted, Health and Safety Code Section 34171 (d)(2) provides that an enforceable obligation does not include an agreement between the City and its Redevelopment Agency and thus the value of non-housing real property assets that were transferred by the Redevelopment Agency to the City in March 2011 and were not subsequently authorized by the Emeryville Oversight Board pursuant to Resolution No. OB06-12 noted above, were to be added to the amount that the Successor Agency must transfer to the taxing entities if they are not returned. In order to avoid having the value of non-housing real property assets added to the amount of funds that the Successor Agency must pay to the taxing entities, on October 2, 2012, the City Council and Successor Agency adopted resolutions to return the remaining seven (7) of the twelve (12) parcels that were invalidly transferred to the City in March 2011 back to the Successor Agency:

- Horton Landing Park – Park/Open Space Land Use¹
- 48th St Community Garden – Park/Open Space Land Use
- Greenway @ 59th – Park/Open Space Land Use
- Greenway @ Parcel D – Park/Open Space Land Use
- Art & Cultural Center - Public Land Use

¹ In accordance with the Long Range Property Management Plan approved by the Department of Finance on November 20, 2015, Horton Landing Park, 48th Street Community Garden, Greenway @ 59th Street, Emery Station Greenway Plaza, Greenway @ Parcel D, Art & Cultural Center and Glashauss Parking Garage @ 65th Street are to be transferred to the City for governmental purposes; the Shellmound Street Lot is to be sold by the Successor Agency; and South Bayfront Site B is to be transferred to the City for future development.

- Shellmound Street Lot - Mixed Use with Residential/Regional Retail Overlay Land Use
- South Bayfront Site B - Mixed Use with Residential/Regional Retail Overlay Land Use.

Notwithstanding the painstaking detail involved in the aforementioned process, only recently did it become evident to staff that the Corporation Yard site, which had been transferred by the Agency to the City in March 2011, had neither been approved as a “governmental purpose” asset to be transferred by the Successor Agency to the City pursuant to Oversight Board Resolution No. OB 06-12, nor was it appropriately returned by the City to the Successor Agency in October 2, 2012. Accordingly, the purpose of this item is to effectuate the return of the Corporation Yard site that was invalidly transferred to the City in March 2011, back to the Successor Agency as required by the State Controller’s Order issued in accordance with Health and Safety Code Section 34167.5.

CONCLUSION

In order to comply with the State Controller’s Order issued in accordance with Health and Safety Code Section 34167.5, it is recommended that the Corporation Yard site identified and described in Exhibits A to the enclosed resolutions be transferred by the City of Emeryville back to the Successor Agency.



Michael A. Guina, City Attorney

Attachments:

Resolution of Successor Agency Accepting Transfer of Corporation Yard
Exhibit A – Corporation Yard Legal Description

Resolution of City Council Transferring Corporation Yard
Exhibit A – Corporation Yard Legal Description