

## ORDINANCE NO. 20-\_\_

**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 4060 Hollis, LLC And Related Ground Lease For The Development And Operation Of An Art Center At 4060 Hollis Street, Emeryville, California (APN 049-0618-004) 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 15301 and 15332)**

**WHEREAS**, in March 2006, the Emeryville Redevelopment Agency (“Agency”) purchased the former United Stamping Company building at 4060 Hollis Street (“Site”) for the purpose of establishing an arts and cultural facility (the “Art Center”); and

**WHEREAS**, in December 2010, the Agency entered into an Exclusive Right to Negotiate Agreement with Emeryville Center for the Arts (“ECA”), a non-profit entity created to operate the Art Center; and

**WHEREAS**, on September 22, 2011, the Emeryville Planning Commission approved a Conditional Use Permit and Design Review application for ECA’s adaptive reuse of the property as an Art Center; and

**WHEREAS**, in 2012, the State of California dissolved all redevelopment agencies statewide, and, as a consequence, the Art Center project was postponed until adequate funds could be identified; and

**WHEREAS**, shortly after the Agency was dissolved, ECA was dissolved as an entity; and

**WHEREAS**, the City was ultimately able to retain the Site and the Site was legally transferred to the City from the Successor Agency to the Emeryville Redevelopment Agency (“Successor Agency”) on September 5, 2017 in accordance with the Long Range Property Management Plan prepared by the Successor Agency; and

**WHEREAS**, on January 16, 2018, the City Council held a study session regarding redevelopment of the Site as an Art Center (“Project”), directed staff to pursue a public-private partnership approach, and approved a draft Request for Qualifications/Proposals (“RFQP”) to solicit developer interest in partnering with the City for development of the Art Center; and

**WHEREAS**, following the release of the RFQP on February 12, 2018, and publication of notice of the release of the RFQP in the East Bay Times and the San Francisco Chronicle, the City received nine responses by the April 13, 2018 deadline; and

**WHEREAS**, on September 17, 2018 the City Council adopted Resolution No. 18-160 authorizing the City Manager to negotiate an Exclusive Right to Negotiate Agreement with Orton Development, Inc. (“ODI”) to implement the Project; and

**WHEREAS**, ODI has formed 4060 Hollis, LLC as a single purpose entity for the purposes of entering into a Lease Disposition and Development Agreement and a related Ground Lease (the “LDDA”) to construct the Project and operate the Art Center; and

**WHEREAS**, on August 27, 2020 the Emeryville Planning Commission approved an application for a Conditional Use Permit and Design Review permit for the Project (UPDR18-006) and adopted a resolution approving the General Plan Conformity Report for the Art Center Project; and

**WHEREAS**, the City and 4060 Hollis, LLC desire to enter into a LDDA for the construction of the Project, and pursuant to Government Code section 37380, a Ground Lease (attached as Exhibit E to the LDDA) (“Ground Lease”) to operate the Art Center;

**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 “Art Center 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 arts and cultural facility on City-owned property located at 4060 Hollis Street, Emeryville, California. The arts and cultural facility is to provide (1) dedicated space for the annual Emeryville Celebration of the Arts, (2) dedicated and managed gallery space for artists, (3) flexible space suitable for performing arts and other community events, and (4) other uses to support fiscal sustainability of the arts and cultural facility. The City Council finds that, by awarding the LDDA and Ground Lease to 4060 Hollis Street, LLC, the City will realize the greatest economic return because Project proposed by ODI is self-sustaining and does not call for any on-going City subsidy.

**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 64 years, that is in substantially the same form as the Ground Lease attached as Exhibit E 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 with 4060 Hollis LLC, including license(s) for construction, parking and access as contemplated in the LDDA.

#### **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 4060 Hollis LLC 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.
- 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 State CEQA Guidelines Section 15301 because the project entails the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; and 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 .7 acres) and is surrounded by urban uses, (iii) the Site has no value is 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.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, Tuesday, September 1, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, September 15, 2020 by the following vote:

AYES:	_____	_____
NOES:	_____	_____
ABSTAIN:	_____	_____
ABSENT:	_____	_____

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:



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

\_\_\_\_\_  
CITY ATTORNEY

**ATTACHMENT:**

Exhibit A: Lease Disposition and Development Agreement with 4060 Hollis, LLC