

RESOLUTION NO. 2023-154

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, TERMINATING THE PURCHASE & SALE AGREEMENT BETWEEN THE CITY OF POMONA AND SEVENTH STREET DEVELOPMENT, INC.

WHEREAS, as of October 7, 2019, the City of Pomona (“City”) and Seventh Street Development Inc. (“Developer”) entered into that certain Purchase and Sale Agreement and Escrow Instructions (“PSA”) for the purpose of sale and development of Property commonly known as Veteran’s Park (Assessor’s Parcel No’s 8707-019-903, 906, & 909) (“Property”) pursuant to Government Code Section 37420 et seq.; and

WHEREAS, the City acquired the Property from the United States of America subject to a restrictive covenant that required the Property to be used as recreational open space in perpetuity. If the City desires to sell, lease, or transfer the Property the City must receive the approval of the Department of the Interior prior to the conveyance; and

WHEREAS, pursuant to Section 8.1 of the PSA, the sale is contingent upon receiving the approval of the Department of the Interior. Developer acknowledged that the City could not and did not guarantee that the City would be able to obtain the approval of the Department of the Interior and be able to proceed with the transaction; and

WHEREAS, the City has spent approximately three years in discussions with the Department of Interior in an effort to obtain the Department’s approval of City proposals to transfer the deed restriction to other land with the City which would allow the Property to be sold; and

WHEREAS, the Department of Interior has consistently rejected all plans, suggestions, and alternatives presented by the City; and

WHEREAS, there is no reasonable belief at this point that the Department of the Interior will approve the removal of the deed restriction allowing the Property to be conveyed as contemplated by the Parties to the PSA; and

WHEREAS, the PSA anticipated this possibility by making the Department of Interior approval a condition precedent to the obligation to close the transaction; and

WHEREAS, there is no ability to convey the Property as currently encumbered by the deed restriction and to ensure there is no additional cloud on title, the City is terminating the PSA at this time and will continue to use the Property as recreational open space indefinitely.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF POMONA, CALIFORNIA, DOES HEREBY FIND DECLARE AND RESOLVE AS FOLLOWS:

SECTION 1. Based upon the inability to clear the deed restriction the City Council finds there is no way to proceed with the transaction under the PSA. The purpose of the PSA has been frustrated by the City and Developer's inability to clear the condition set forth in the PSA for the transaction to proceed. As such, terminating the transaction with the intent to eventually improve the park facilities and operate the site as a park indefinitely is in the City's best interest.

SECTION 2. That the PSA is hereby terminated as the Parties are unable to satisfy the condition precedent to the close of escrow that the Department of Interior remove the recreational open space restrictive covenant.

SECTION 2. The City Manager is hereby directed to provide notice to the Developer and Escrow of the termination of the PSA and take all actions necessary to effectuate the intent of this Resolution.

SECTION 3. That the above action is not a "project" as defined in the California Environmental Quality Act (CEQA) Guidelines Section 15378, because it does not have a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Rather, it is an administrative action of general policy and procedure making that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

SECTION 4. The City Clerk shall certify to the passage and adoption of this resolution and it shall become effective immediately upon its approval.

PASSED, APPROVED AND ADOPTED this 11th day of September, 2023.

CITY OF POMONA:

Tim Sandoval
Chair/Mayor

APPROVED AS TO FORM:

ATTEST:

Sonia Carvalho
City Attorney

Rosalia A. Butler, MMC
City Clerk

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Sept. 11, 2023

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I, Rosalia A. Butler, MMC, CLERK of the CITY OF POMONA CITY COUNCIL do HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting thereof held on September 11, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Pomona, California, this 11th day of September 2023.

Rosalia A. Butler, MMC, City Clerk