

October 5, 2009

Subject: Settlement with Licking Enterprises, Inc/Purchase of Property at 1157 East Taylor Street and Adoption of Appropriation Ordinance Amendments in the Building and Structure Construction Tax Fund
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dwelling units per acre) and the application was recommended by the staff in the Planning Department.

In the context of opposition from the surrounding community, former Councilmember Cindy Chavez issued a memorandum recommending denial of the rezoning as premature, since the property was being considered for inclusion in a future freeway interchange, or alternatively for an expansion to Watson Park.

On September 16, 2002, the rezoning was denied by the City Council.

Licking unsuccessfully pursued remedies with the U.S. Department of Housing and Urban Development, and then initiated this lawsuit on February 5, 2007. The lawsuit alleges that the City's denial of the rezoning was based on discrimination against disabled individuals. In particular, the suit claims that since almost all conforming rezoning applications are approved, the denial of this application was the result of animosity toward recovering alcoholics and drug abusers, as reflected in the sentiments of community members. The lawsuit alleged that the City's explanation for denial was a pretext for the real discriminatory motivation.

During the course of litigation, it became apparent that the freeway interchange project at Route 101 and Mabury Road / Taylor Street was likely to proceed, and the subject property would be needed for construction of that interchange. The 101/Mabury interchange has been identified as an important transportation improvement to provide access to the planned Berryessa BART Station (proposed for completion in 2018). Therefore, the parties agreed to negotiate a settlement of the lawsuit through the purchase of the property by the City. The City's acquisition of the property for the 101/Mabury interchange demonstrates a local commitment to the project and can assist in securing regional transportation grants.

The parties have tentatively agreed to the following terms: The City will purchase the property for \$2,096,000, which is approximately the appraised value of the property, assuming that the property had been rezoned. The City will lease the property back to Licking's facility, LifeChoices, for \$1 per year. When the City needs the property for construction of the freeway interchange, no sooner than January 1, 2013, the City will give six months notice for LifeChoices to vacate the property, and the lease will terminate. Additionally, to compensate LifeChoices for vacating the property, the City will pay LifeChoices an amount equal to the lost goodwill of the business as of May 30, 2009. Since the parties disagree about that calculation, the parties agree to submit the issue to binding arbitration. The goodwill payment will be paid after LifeChoices vacates the property.

ANALYSIS

In view of the ultimate need for the property for the freeway project, a resolution of the discrimination lawsuit by purchasing the property and compensating the owner for loss

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of goodwill is reasonable. The leaseback of the property for a nominal sum satisfies the plaintiff with regard to the alleged discrimination, which the City denies, without the expenditure of additional funds.

The settlement is reasonable in light of the inherent risks and costs of litigation and also addresses a potential City need for the property in the future. This settlement is made as a compromise of a disputed claim, and the City is not admitting that it is legally liable for any amounts claimed.

PUBLIC OUTREACH/INTEREST

This memorandum was included in the Early Distribution packet, as it requires Council action on the use of public funds equal to \$1 million or greater. This memorandum and the settlement agreement are posted on the City's website for the October 27, 2009 Council Agenda.

COORDINATION

The settlement has been coordinated with the Department of Transportation, the Department of Planning, Building and Code Enforcement, and the City Manager's Office.

COST SUMMARY/IMPLICATIONS

The settlement will cost \$2,096,000, and as recommended in this memorandum, an appropriation will be established in the Building and Structure Construction Tax Fund to fund the settlement. This action will use the Ending Fund Balance in the Building and Structure Construction Tax Fund.

There is an anticipated future cost to the City for the lost goodwill of the business when LifeChoices vacates the property. Since the parties disagree about the calculation, the parties agree to submit the issue to binding arbitration. Once this is settled, the goodwill payment will be paid. However, this payment is not expected to occur sooner than January 1, 2013.

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BUDGET REFERENCE

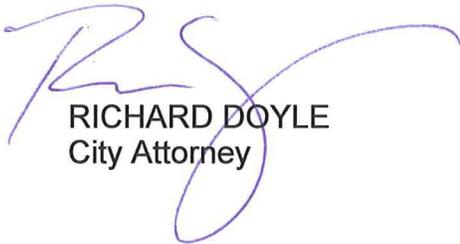
The table below identifies the fund and appropriation proposed to fund the settlement recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn.	Amount for Settlement	2009-2010 Adopted Capital Budget (Page)	Last Budget Action (Date, Ord. No.)
429	8999	Ending Fund Balance	\$2,179,770*	\$2,096,000	V - 938	N/A

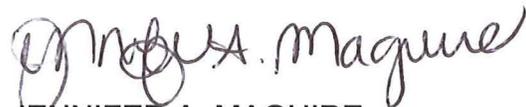
* As included in the 2008-2009 Annual Report, recommendations to adjust the Ending Fund Balance in the Building and Structure Construction Tax Fund was brought forward for Council approval on October 20, 2009. The recommendations increased the Ending Fund Balance by \$1,334,023, bringing the total Ending Fund Balance to \$3,513,793.

CEQA

EIR Resolution No. 74195.1, File No.PP09-186.



RICHARD DOYLE
City Attorney



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Richard Doyle, City Attorney at (408) 535-1900.