Legislation Details (With Text)

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File created:	7/7/2021	**In control:**	Council and Authorities Concurrent Meeting
On agenda:	7/13/2021	**Final action:**	
Title:	Per City Council Policy 042: Reconsideration of Council Action-Reconsideration of Council action taken at the June 22, 2021 City Council meeting regarding Council's action to take no action and not to place an item on a future agenda for the request submitted by Robert Mezzetti, under Council Policy 030: Adding An Item to the Agenda, requesting "discussion on Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan LLC for a project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)."		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Council Policy 042 - Reconsideration of Council Action, 2. Petition from Robert Mezzetti, 3. Transcript of Kelly Macy Testimony – July 6, 2021, 4. June 22, 2021 Staff Report on Written Petition, 5. Email Follow Up Request, 6. July 14, 2020 Report to Council, 7. November 12, 2020 Letter to Bob Mendelsohn, 8. POST MEETING MATERIAL, 9. ECOMMENT		

Date	Ver.	Action By	Action	Result
7/13/2021	1	Council and Authorities Concurrent Meeting	Adopted	Fail

REPORT TO COUNCIL

SUBJECT

Per City Council Policy 042: Reconsideration of Council Action-Reconsideration of Council action taken at the June 22, 2021 City Council meeting regarding Council's action to take no action and not to place an item on a future agenda for the request submitted by Robert Mezzetti, under Council Policy 030: Adding An Item to the Agenda, requesting "discussion on Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan LLC for a project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)."

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On July 6, 2021, Kelly Macy, Vice President of Republic Metropolitan requested reconsideration of the June 22, 2021 Council vote to take no action on the Robert Mezzetti petition regarding 500 S. Benton. After discussion, Council voted to place Ms. Macy's request for reconsideration on the July 13, 2021 Council agenda. The City Attorney then read into the record the requirements for reconsideration of a Council action. Per City Council Policy 042, RECONSIDERATION OF COUNCIL ACTION (Attachment 1), the July 13, 2021 reconsideration is restricted as follows:

> *Upon approval of a motion to reconsider, and at such time as the matter is heard,* the City ***Council shall only consider any new evidence or facts not presented previously*** *with regard*

to the item or a claim of error in applying the facts.

As background, the written petition submitted by Robert Mezzetti (Attachment 2) and staff report (RTC# 21-851) (Attachment 3) provided the evidence and facts which led to the Council action to take no action and not add it to a further Council agenda. Under the Council's Policy, **the new evidence or facts** that were previously not presented are based on Ms. Kelly Macy's statement:

> Republic Metropolitan has been working diligently on the 500 Benton Street project in good faith with the City of Santa Clara, the VTA and the community since early 2018. ***Last July, the ENA was extended until August 5, 2021, by unanimous vote by both the City Council and the VTA Board****….(Full Transcription, Attachment 4)*

Upon these comments, staff requested submission of the executed ENA **as the new fact and evidence to justify the Council's reconsideration action**. As of July 8, Ms. Macy has not submitted the required new evidence supporting her claim that led to the Council's ability to proceed with reconsideration (Attachment 5). Despite staff's request on July 6 and 8, nothing has been submitted to include in this packet and in support of reconsideration. To staff's knowledge, such executed document does not exist.

DISCUSSION

For purpose of the Council's reconsideration on July 13, and according to Council's Policy, the matter of whether the **ENA that expired on August 5, 2020 was ever actually extended is the only new matter that can be discussed under the Council Policy and only evidence or facts that were previously not presented about this issue is proper for the motion** for reconsideration of this item.

Exclusive Negotiating Agreement

The Exclusive Negotiating Agreement with Republic Metropolitan (Developer) for 500 S. Benton was three party agreement between the City, VTA and Developer, executed on February 6, 2018 for a term of 12 months. The First Amendment to extend the term an additional six months was executed on February 8, 2019. The Second Amendment to the ENA was executed on November 12, 2019 and extended the term to August 5, 2020.

On July 14, 2020, Council authorized the City Manager to negotiate and execute a Third Amendment to the ENA consistent with the terms in the staff report (Attachment 6 - RTC# 20-642). The staff report outlined several key provisions:

- A final term sheet be presented to the Council for consideration by November 2020
- Clarification that the Developer is required provide a second well site, in addition to the relocation of the existing well, so that the City's potential water resources are maintained.
- Developer provides the City (and VTA) with an indemnity in relation to any risk or liabilities, including potential penalties associated with the disposition of the City property under the Surplus Lands Act, Gov't Code section 54220 et seq.
- As the ENA is a three party (City, Developer and VTA) agreement, Council authorization is to extend the term to match the term authorized by the VTA Board but in no event longer than 12 months (i.e., August 5, 2021).

None of these items were achieved by the other parties to the ENA. On November 12, 2020, the City advised the Developer in writing that the ENA expired as of August 5, 2020 (Attachment 7). Prior to

the transmittal of the letter, City staff discussed its position with VTA staff. VTA staff advised that the Developer had not satisfied the requirements for an ENA extension, as well.

On July 6, 2021, Ms. Macy testified that the ENA was extended until August 5, 2021 by unanimous vote of by the City Council and VTA Board. The City Manager requested that Republic provide the City with an executed copy of the amendment. Without such information there are no new facts for the Council to consider or discuss that would satisfy the requirements of Policy 042. As of July 8, 2021, nothing has been provided in support of Ms. Macy's statement and, as already stated, staff believes such document does not exist and the November 2020 letter is the final City position communicated to Developer.

Absent new information from the June 22, 2021 Council discussion and action, staff does not have a recommendation that would support adding an item of reconsideration to a future agenda as such an action would not be consistent with the Council own Policy to reconsider Council action.

COORDINATION

This item has been coordinated with the City Attorney's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <mailto:clerk@santaclaraca.gov> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Staff's position is the same as the June 22, 2021 report and, based on Council Policy 042 alone, the requirements of new evidence or facts in support of Council reconsideration have not been met.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Council Policy 042 - Reconsideration of Council Action
2. Petition from Robert Mezzetti
3. Transcript of Kelly Macy Testimony - July 6, 2021
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