



STAFF REPORT

CITY of YORBA LINDA

ADMINISTRATION DEPARTMENT

DATE: JULY 19, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: PAMELA STOKER, ECONOMIC DEVELOPMENT MANAGER

SUBJECT: PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS WITH EVAN CARL, DBA EVANS SMOKEHOUSE LLC, FOR THE SALE OF THE CITY-OWNED VACANT PARCEL LOCATED AT 4859 MAIN STREET, YORBA LINDA (APN# 323-304-19) AND THIRD AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY AND EVAN'S SMOKEHOUSE

RECOMMENDATION

It is recommended that the Yorba Linda City Council authorize the City Manager to enter into the attached Purchase and Sale Agreement and Joint Escrow Instructions with Evan Carl, dba Evan's Smokehouse LLC, to sell the City-owned vacant parcel located at 4859 Main Street, Yorba Linda (APN# 323-304-19), for the purpose of developing an eating establishment.

It is further recommended that the City Council also approve a Third Amendment to the Lease Agreement allowing Evan's Smokehouse to continue its operations at 4859 Main Street during the escrow process.

BACKGROUND

Evan's Smokehouse has occupied a 5,000 square foot, City-owned lot at 4859 Main Street for the past 20 months as a temporary location for an outdoor barbeque establishment. The use was proposed to be interim until the City could reasonably determine the highest and best use for the property. The site had been historically used as public parking lot consisting of approximately 10 parking stalls. However, with the construction of the Town Center public parking structure, it was envisioned that vacant infill property in the vicinity would ultimately be developed to help boost commercial interest along Main Street and encourage pedestrians and patrons to the area.

Although the City has not actively marketed the site, staff has received interest from the current tenant to acquire the property and build a permanent restaurant facility and eliminate the temporary nature of his business operation.

In conjunction with contemplating the sale of the property and as required by State law, the City offered the property as a potential housing site, consistent with Government Code Sections

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54220-54234 related to the Surplus Lands Act. The notice of land availability was sent to over 1,000 housing-related developers identified on the Housing and Community Development (HCD) website on December 20, 2021. Only one response was received, but the entity chose not to respond nor negotiate during the 60-day negotiation period. Staff assumes the lack of housing interest is quite possibly due to the location within a commercial downtown district and relatively small lot size.

As such, the City has completed the requirements pursuant to the Surplus Lands Act and received confirmation in letter from HCD, dated June 14, 2022, that the City may now proceed with the lease or sale of the property

DISCUSSION

The subject property is a key component to Town Center and the ultimate development of infill properties along the Main Street corridor.

Upon successful lease of the site, the restaurateur has communicated his interest in acquiring the property to develop a 2,700 square foot, two-story full-service BBQ restaurant with outdoor patio dining.

The negotiated Purchase and Sale Agreement suggests the opening of escrow upon execution of the contract. The buyer will also be required to place in escrow \$25,000 in earnest money within 5 days of opening escrow. The agreed upon purchase price for the site is \$240,000 or \$48.00 per square foot, which is fairly consistent with the valuation for comparable, vacant commercial properties in the vicinity. For example, the City sold a vacant commercial parcel at the corner of Arroyo and School Street to Clyde’s Hot Chicken in 2020 for \$50 per square foot. That location was valued at a slightly higher price per square foot due to the property being located on a hard corner with higher visibility and proximity to the parking structure. Discussions with City Council suggested that a slightly lesser value might be applied to the inline, less prominent location on Main Street. However, the valuation is perceived to be fair market value.

Certain conditions for both the Buyer and Seller would need to be met, including award of full entitlements, prior to the close of escrow. The Buyer projects an anticipated closing date of March 31, 2023, with an outside closing date of July 31, 2023. The Agreement contemplates the terms and conditions for both the Buyer and Seller in effectuating the real estate transaction. For example, the Buyer, among other obligations, will 1) obtain full entitlement approvals for a full-service restaurant; 2) be fully responsible for all on-site improvements, including utilities, drainage, landscaping, trash, etc.; 3) commit to provide the required off-site parking as part of the City’s parking in-lieu program; 4) complete due diligence of the property during the escrow period and acquire the site in as-is condition; and 5) share all closing costs with the Seller as described in Section 8 of the Agreement.

As in any real estate transaction, the surety of a final closing hinges on all conditions being satisfied during the escrow period. However, as part of this Purchase and Sale Agreement, the City and Evan Carl have agreed to work cooperatively in finalizing the real property

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transfer and obtaining the required project approvals to ensure the ultimate development of a BBQ restaurant on the site.

LEASE AGREEMENT

The City’s lease with Evan’s Smokehouse at the Main Street location began in October 2020. The original lease terms called for a one-year lease with a possible 6-month extension. The first extension was granted in October 2021 and continued through April 2022. Earlier this year the lease was extended for an additional six months per the lessee’s request to allow additional time to operate while the Purchase & Sale Agreement was negotiated. The current lease is set to expire on August 31, 2022.

Staff is recommending that a Third Amendment to the Lease Agreement be approved to allow the restaurateur to continue to operate his restaurant at 4859 Main Street while the property is in escrow. The Third Amendment would allow for an 11-month lease period (September 1, 2022, through July 31, 2023) with intent to terminate the lease upon close of escrow. Additionally, the monthly lease rate will be increased by 8%, consistent with the current CPI, which would be effective September 1, 2022. All other terms and conditions would remain in effect as originally agreed upon.

PROJECT SCHEDULE

The anticipated project schedule suggests closing of escrow in spring of next year, building permit issuance by summer with construction commencing soon thereafter. An 8-month construction period would then suggest a restaurant opening in Spring 2024.

FISCAL IMPACT

Proceeds from this land sale will be deposited into the General Fund along with in-lieu parking fees to be determined as part of the Conditional Use Permit and Design Review process.

ALTERNATIVES

The City Council may wish to revise the terms and conditions established in the attached Purchase and Sale Agreement and Joint Escrow Instructions or decline the offer and postpone the sale of the property to a later date.

The Third Amendment to the Lease Agreement may be considered separate from the Purchase Agreement and may be amended or revised to the Council’s pleasure.

ATTACHMENTS

Attachment A – Purchase and Sale Agreement and Joint Escrow Instructions
Attachment B – Third Amendment to the Lease Agreement Between the City of Yorba Linda and Evan’s Smokehouse