

Memorandum

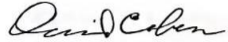
TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember David Cohen

SUBJECT: SEE BELOW

DATE: June 28, 2021

Approved



Date: 06/28/2021

SUBJECT: STATUS OF ADDITIONAL VENDOR NEGOTIATION

RECOMMENDATION

1. Accept applicant's revised offer dated June 28, 2021 that updates sections g and l from its June 18 offer as highlighted below:
 - a. The property owner shall provide at least one-year advance written notice to all vendors of any planned closure, gap in operation, or relocation of The Flea Market on site, some other market location, or any other location in San Jose. The notice would not be initiated prior to July 1, 2023.
 - b. Commencing September 1, 2021, the owner shall submit a written quarterly status report to the Director of PBCE that summarizes all construction planning and permitting activities (soil remediation, utilities, infrastructure, grading, building construction) that may result in construction impacts to the existing Flea Market operations. The Report must include estimated dates of when the earliest construction impact may occur, if known. This report shall be provided to the City no later than 30 days following the end of the quarter for which it is due.
 - c. The approximately five-acre Urban Market area designated in the Berryessa BART Urban Village Plan as the publicly accessible plazas of the new development is intended to provide the existing Flea Market vendors an opportunity to relocate within the new development on the subject property.
 - d. The property owner shall provide Flea Market vendors with a current month to month space rental agreement the first opportunity to move to the Urban Market area.
 - e. The property owner shall set rents in the Urban Market area in an amount comparable to other open-air markets in the Bay Area such as The Capital Flea Market and any other similar markets in existence at the time of the offer of relocation from the property owner to the vendors.
 - f. A Vendor Business Transition Fund will be established and managed by the City or its designee. The general purpose of this fund is to mitigate direct expenses the vendors may experience when moving to any temporary site and/or Urban Market area on site, some other market location, or any other retail location in San Jose.
 - g. The property owner shall endow the Vendor Business Transition fund with **\$5.0 million**, in accordance with the following schedule:
 - (1) Within 120 calendar days of the effective date of the Planned Development Zoning File No. PDC17-051, the property owner shall transfer \$500,000 to the City in early funding to support the initiation of the Flea Market Advisory Group and Vendor Business Transition fund, and

- (2) On the date that the property owner issues the one-year notice to the vendors in accordance with Section **a** above, the property owner shall transfer \$2 million to the City's Vendor Business Transition Fund.
 - (3) **On the date that the existing Flea Market ceases operation on-site, the property owner shall transfer an additional \$2.5 million to the City's Vendor Business Transition Fund.**
 - h. A Flea Market Advisory Group consisting of representatives of the property owner/developer, the Flea Market vendors, and the City will be created, in accordance with item i), with the intention of ensuring Flea Market vendors have a meaningful voice and role in determining the use of the transition funds and guiding the development of the urban market concept by providing the following:
 - (1) Recommendations to the property owner and City on the design, operation, and associated parking of the Urban Market area;
 - (2) Funding decisions for the Vendor Business Transition Fund including the general purposes of the fund described in item f), and additional resources the vendors may require including but not limited to data, relevant existing models of public/private markets, and examples of self-sustaining operational methods in order to inform the recommendations outlined above.
 - (3) Regular communication with all of the Flea Market vendors on the status and progress of the Flea Market transition, decisions, and recommendations made by the Flea Market Advisory Group, as well as the opportunity for Flea Market vendors who are not part of the Advisory group to provide feedback to the Advisory Group.
 - (4) Establishing protocols for determining how Flea Market vendors with a month-to-month rental agreement will be offered the opportunity to relocate to the new Urban Market.
 - i. Upon receipt of the first contribution to the City by the property owner, the City or its designee will form a Flea Market Advisory Group by drafting a charter that shall include at a minimum the purpose of the group, the number of members of the group, the composition of the group, and which members shall have voting rights. The City or its designee shall convene an initial group of vendors and stakeholders, including the property owner, to draft and approve the Flea Market Advisory Group charter.
 - j. The property owner shall introduce the City to any successor in interest to the Urban Market site at least 60 calendar days prior to the close of escrow in order to engage in a conversation about the Urban Market project.
 - k. The property owner shall ensure that all affordable housing units required by the City's Inclusionary Housing Ordinance (San Jose Municipal Code Chapter 5.08) are constructed on the subject property in the manner required by that ordinance.
 - l. The property owner agrees that all vendors who follow the rules and terms in their Rent Agreement **shall continue to have their Rent Agreement renewed and shall not** be evicted from The Flea Market prior to the planned closure or relocation of the market.
2. Acknowledge the following agreement the applicant is offering to Flea Market Vendors:
 - a. The Flea Market, Inc. will allow any existing vendor of record on July 1st, 2021 to opt-in to a 6-month license agreement. The "6-month" term will be fixed blocks of time from July 1st to December 31st and January 1st to June 30th each year.

June 28, 2021

Subject: Status of Additional Vendor Negotiation

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3. Recognize that City staff from the Office of Economic Development looks forward to engaging the Berryessa Flea Market Vendor Association (BFVA) and other interested vendors as the future of the urban market takes shape, as well as activating business support services for vendors. Contracts for consultant services will follow City procurement requirements, with opportunities for vendor participation in RFP review panels.
4. Upon approval of Planned Development Zoning File No. PDC17-051, direct the City Manager's Office to schedule a special City Council meeting for the purpose of final adoption of the Zoning Ordinance to occur no later than July 13, 2021.

The June 28 offer from the applicant states that it is valid if the Council approves its application for the rezoning ordinance, Planned Development Zoning File No. PDC17-051, on June 29, 2021 and finally adopts the rezoning ordinance on or before July 13, 2021.

DISCUSSION

I want to thank the vendors and the applicant for a productive and cordial conversation on Friday. What continues to be clear is that anything that offers the existing vendors security for their businesses is most important to them.

We heard that the assurance of a minimum of 3 years before changes are made to the market wasn't stated clearly enough for those currently leasing stalls to be sure they would be allowed to stay. That's why I'm suggesting clarifying the language of item 1 to make sure the current license agreements are extended each month as long as a vendor follows the rules and terms of their agreement. This will ensure that all vendors in good standing will be able to continue to operate.

The availability of financial assistance for the vendors during the future transition has always been of the utmost importance. We understand that the feasibility of utilizing the American Rescue Plan funding for the City's contribution to the vendor transition plan is currently uncertain. That's why I'm pleased that the Bumb family has voluntarily offered an additional \$2.5 million to the transition fund. That brings the total voluntary contribution to \$5 million. Adding certainty to the funding source will help the vendors cover expenses at the time the existing market closes, whether to wind down their business, relocate to a new place in San Jose, or transition to the new urban market.

Our staff has been working with the City Attorney's office, Office of Economic Development, and City Manager's Office to vet the requests the vendors association presented at the meeting on Friday. The outcome is that a number of their requests are already met through the current motion, and a number of their requests cannot be conditioned by the City because they involve the regulation of the commercial landlord-tenant relationship in a manner that is unenforceable by the City according to state law or involve the purchase or use of private property for public purposes. Those items that involve the commercial landlord-tenant relationship are acknowledged by this memo as agreements the applicant is offering to the Flea Market vendors and that the vendors may accept.