



Legislation Text

File #: 18-2138, **Version:** 1

Resolution to Direct the City Attorney Regarding the 319 S. Fifth Avenue a/k/a/ the "Library Lot"

Prepared by: Matthew Rechten, Senior Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Howard S. Lazarus, City Administrator

Whereas, On March 17, 2014, City Council adopted Resolution R-14-98, which directed the City Administrator to market the Library Lot for sale;

Whereas, On January 19, 2016, following a competitive bidding process, selection of two finalist potential buyers, public engagement, including meetings, open houses, and an online survey, and submission of "best and final" offers, City Council adopted a resolution approving CORE Spaces as the selected developer of the Library Lot and authorizing the City Administrator and City Attorney to begin the negotiation process for sale of the property;

Whereas, On April 17, 2017, City Council voted 8-3 to, among other things, "authorize the sale of the above ground development rights of" the Library Lot "to Core Spaces with the terms stated in Core Spaces' response to the City's Offering Memorandum, Core Spaces' Supplemental Letter and the additional terms stated in this Resolution ..." and to authorize "the Mayor, Clerk and City Administrator ... to execute necessary documentation, after approval as to form and substance by the City Attorney, to complete the sale ...;"

Whereas, On May 31, 2018, the City and CORE Spaces executed a contract (the "Contract"), which conditions any duty to close on there being "[n]o litigation or administrative proceeding ... commenced or threatened, and no legislative action ... taken or enacted, that could, in the City Administrator's sole judgment and discretion, and/or in the reasonable judgment of the Purchaser, have the effect of preventing or impairing Purchaser's or Seller's ability to carry out the terms of this Agreement or the construction and completion of Purchaser's project as contemplated hereby;"

Whereas, On June 18, 2018, City Council adopted Resolution R-18-247, which adopted ballot language for Proposal A, a proposed amendment to the City's Charter that was submitted to the City by petition;

Whereas, On June 28, 2018, Councilmember Bannister and then-Councilmember Kailasapathy filed a lawsuit against the City Clerk, the Mayor and the City, Washtenaw County Circuit Court Case No. 18-682-CZ, seeking a declaration that the Contract is invalid and an injunction barring action in furtherance of it;

Whereas, On August 2, 2018, Ann Arbor Central Park Ballot Committee (the "Committee"), which supported Proposal A, sued the City and its Clerk for declaratory and equitable relief (in Washtenaw County Circuit Court Case No. 18-816-CZ), alleging, among other things, that the Contract is invalid;

Whereas, On September 5, 2018, the Court heard the City's Motion to Dismiss the Councilmember's

lawsuit, and has taken, and still holds, that motion under advisement;

Whereas, On October 24, 2018, the City filed its motion to dismiss the Committee's lawsuit, which motion remains pending;

Whereas, On November 6, 2018, electors approved Proposal A to amend the City Charter, which amendment, in relevant part, states that land including the Library Lot "shall be retained in public ownership, in perpetuity, and developed as an urban central park and civic center commons known as the 'Center of the City;'"

Whereas, On November 12, 2018, CORE Spaces notified the City: (1) the amendment is invalid, (2) the City has no right to terminate, (3) CORE Spaces intends to continue performing the Contract and expects the City to do the same, and (4) it will seek damages and other relief against the City should the City terminate;

Whereas, On November 29, 2019, the plaintiffs in both of the pending lawsuits have offered to the City that they will stipulate to entry of decrees permanently enjoining the City from taking any action in furtherance of the Contract as a way to resolve the lawsuits; and

Whereas, The Committee has sought and received the City's stipulation to an order granting the Committee leave to file an amended complaint reflecting changes in circumstances, including, but not limited to, approval of Proposal A.

RESOLVED, That City Council directs the City Attorney to:

Sponsored by: Mayor Taylor