

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Mayor and Council

AGENDA DATE: June 9, 2015

CONTACT PERSON/PHONE: Bertha A. Ontiveros, Senior Assistant City Attorney (212-0033)
Kurt Fenstermacher, Assistant to City Manager (212-1070)

DISTRICT(S) AFFECTED: District 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what?
Be descriptive of what we want Council to approve. Include \$ amount if applicable.

RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT FOR THE TRANSFER OF VESTED DEVELOPMENT RIGHTS WITH THE RESCUE MISSION OF EL PASO INC. THAT PERMITS THE TRANSFER OF VESTED RIGHTS FROM THE SENDING PARCEL LOCATED AT 900/910 WYOMING STREET TO THE RECEIVING PARCEL(S) LOCATED AT 130 N. COTTON/221 N. LEE STREETS IN THE CITY OF EL PASO AND TAKE SUCH ACTIONS THAT ARE NECESSARY TO IMPLEMENT SUCH AGREEMENT; AND DETERMINING THAT THE VESTED PROJECT AT 900/910 WYOMING STREET IS EXEMPT FROM THE SPECIAL PERMIT REQUIREMENT UNDER SECTION 20.10.695 OF THE CITY CODE OF THE CITY OF EL PASO

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City owns certain property located at 130 N. Cotton and 221 N. Lee Street. The City and the Rescue Mission entered into two Contracts of Sale dated January 14, 2015 and a First Amendment to Contract of Sale dated April 21, 2015 in which the City agreed to convey the City Parcels to the Rescue Mission in exchange for the simultaneous conveyance of the Wyoming Parcel to the City along with certain monetary consideration described therein

On April 28, 2015, the City Council approved an ordinance to amend the City Code to permit the transfer of vested development rights from the Wyoming property to the Cotton and Lee properties so that the Rescue Mission can built the vested project on the Cotton/Lee property they are acquiring, without the need of a special permit, as set forth in the Contracts of Sale and First Amendment.

This resolution authorizes the City Manager to sign an agreement to permit such transfer of vested development rights and determines that the vested project can be built without a special permit based on the Council's determination that the project meets the criteria set forth in the City Code.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

On April 28, 2015, City Council approved Ordinance No. 018349 and approval of Contracts of Sale and First Amendment to Contract of Sale on January 14, 2105 and April 21, 2015

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*******REQUIRED AUTHORIZATION*******

LEGAL: (if required)

FINANCE: (if required)

DEPARTMENT HEAD:

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, on April 28, 2015, the City Council of the City of El Paso adopted Ordinance No. 018349 amending Section 20.10.695 of the City Code of the City of El Paso, and authorizing the transfer of vested rights in a property that meets certain criteria as a sending parcel to a qualified receiving parcel, all as set forth therein;

WHEREAS, the Rescue Mission is the owner of an improved parcel of real property located at 900/910 Wyoming Street in the City of El Paso, El Paso County, Texas (the “Wyoming Parcel” or the “Sending Parcel”); and

WHEREAS, City is the owner of two improved parcels of real property located at 130 Cotton Street and 221 N. Lee Street in the City of El Paso, El Paso County, Texas (the “City Parcels” or the “Receiving Parcel”); and

WHEREAS, the City and the Rescue Mission entered into two Contracts of Sale dated January 14, 2015 and a First Amendment to Contract of Sale dated April 21, 2015 (collectively, the “**Contracts**”) in which the City agreed to convey the City Parcels (as further described by metes and bounds in the Contracts) to the Rescue Mission in exchange for the simultaneous conveyance of the Wyoming Parcel (as further described by metes and bounds in the Contracts) to the City along with certain monetary consideration described therein; and

WHEREAS, the City and the Rescue Mission agreed as a condition in the Contracts that the Rescue Mission may transfer their vested rights to develop the Project from the Wyoming Parcel as the Sending Parcel to the City Parcels as the Receiving Parcel; and

WHEREAS, the City and the Rescue Mission desire to carry out the transfer of vested project rights from the Sending Parcel to the Receiving Parcel and approve the Transfer of Development Rights Agreement, as further described herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO THAT:

- 1) The City Manager be authorized to sign the agreement for the Transfer of Vested Development Rights with the Rescue Mission of El Paso, Inc. that permits the transfer of vested rights from the sending parcel located at 900/910 Wyoming Street to the receiving parcel(s) located at 130 N. Cotton/221 N. Lee Streets in the City of El Paso and take such actions that are necessary to implement such agreement;
- 2) The project at 900/910 Wyoming Street has vested and the City Council hereby determines the vested project is exempt from the special permit requirement under

Section 20.10.695 of the City Code of the City of El Paso because it meets the following criteria:

- a. the proposed use being transferred from the Sending Parcel to the Receiving Parcel, is identified as the Project in the Vested Project Determination Letter;
- b. the proposed use is an appropriate land use on the Receiving Parcel and is in conformance with the Plan for El Paso; and
- c. the transfer of land and proposed use of the land is in the best interests of the public health, safety and welfare.

Agreed to and signed this _____ day of June, 2015.

THE CITY OF EL PASO

Tomás González
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

Approved as to Form:

Bertha A. Ontiveros
Senior Assistant City Attorney

STATE OF TEXAS §

TRANSFER OF VESTED DEVELOPMENT RIGHTS

COUNTY OF EL PASO §

For good and valuable consideration, the receipt of which is hereby acknowledged, the **City of El Paso, Texas** (“City”) and **Rescue Mission of El Paso, Inc.** (“Rescue Mission”) (jointly, the “Parties”) do agree and covenant as follows as of the date signed below:

WHEREAS, the Rescue Mission is the owner of an improved parcel of real property located at 900 Wyoming Street in the City of El Paso, El Paso County, Texas, as described in **Exhibit “A”** attached hereto and made a part hereof for all purposes (referred to herein as the “Sending Parcel”); and

WHEREAS, on November 10, 2014, the Rescue Mission’s vested rights petition was granted by the City of El Paso Planning Department based on the continuous progress toward development of a transitional housing project and related uses on the Sending Parcel, which comprises the Project as further described herein; and

WHEREAS, City is the owner of two improved parcels of real property located at 130 Cotton Street and 221 N. Lee Street in the City of El Paso, El Paso County, Texas, as described in **Exhibit “B-1”** and **“B-2”** attached hereto and made a part hereof for all purposes (collectively, the two parcels are jointly referred to herein as the **“Receiving Parcels”**); and

WHEREAS, the City and the Rescue Mission entered into two Contracts of Sale dated January 14, 2015 and a First Amendment to Contract of Sale dated April 21, 2015 (collectively, the **“Contracts”**) in which the City agreed to convey the Receiving Parcels to the Rescue Mission in exchange for the simultaneous conveyance of the Sending Parcel to the City and certain monetary consideration described therein; and

WHEREAS, the City and the Rescue Mission agreed as a condition in the Contracts that the Rescue Mission may transfer their vested rights to develop the Project from the Sending Parcel to the Receiving Parcel; and

WHEREAS, on April 28, 2015, the City Council of the City of El Paso adopted Ordinance No. 018349, which authorizes the transfer of vested rights in a property that meets certain criteria as a sending parcel to a qualified receiving parcel, all as set forth therein;

WHEREAS, the City and the Rescue Mission desire to carry out the transfer of vested project rights from the Sending Parcel to the Receiving Parcel as further described herein.

NOW THEREFORE, pursuant to Section 20.10.695 of the City Code of the City of El Paso (“Code”) with regard to the transfer of vested project rights, the City has determined that:

A. The Sending Parcel is located in a C-4 commercial zoning district, meets the following criteria and is therefore an eligible sending parcel under Section 20.10.695(B) of the Code:

1. The Rescue Mission requested and on November 10, 2014, received a letter of vested rights determination from the Lead Planner, Subdivisions of the City of El Paso’s Planning and Inspections Department (the “**Vested Rights Letter**”) that the Sending Parcel is vested for use as transitional housing and related uses (as the term “transitional housing” is defined in Chapter 20 of the Municipal Code prior to September 9, 2014), including but not limited to include vocational training, restaurant, hospice services, youth transitional and permanent housing, provision of emergency or temporary shelter and elderly and disabled permanent housing (the “**Project**” or “**Vested Project**”).
2. The Vested Project is an allowed use within the C-4 and M-1 zoning district on which the Receiving Parcel is located.
3. The Vested Project as planned, developed, and depicted on applications for all permits, substantially conforms to the Project for which the vested rights determination letter was granted.
4. The City has a real property interest in the Receiving Parcels prior to closing and in the Sending Parcel following the closing of the contemplated property conveyance and exchange as set forth in the Contracts.

B. The Receiving Parcel is located in a C-4 commercial and an M-1 manufacturing zoning district and is the designated receiving parcel for the Vested Project under Section 20.10.695(C) of the Code.

C. The Vested Project is exempt from the requirement that a special permit be secured since the City Council has found that:

1. the proposed use being transferred from the Sending Parcel to the Receiving Parcel, is identified as the Project in the Vested Project Determination Letter; and
2. the proposed use is an appropriate land use on the Receiving Parcel and is in conformance with the Plan for El Paso; and

3. the transfer of land and proposed use of the land is in the best interests of the public health, safety and welfare.

On Closing in accordance with the Contracts and upon recordation of this instrument, the Sending Parcel retains no vested project rights under the Vested Rights Determination Letter of November 10, 2015, and all rights thereunder to the Vested Project proposed by the Rescue Mission of El Paso, Inc. are transferred and attach to the Receiving Parcel.

Agreed to and signed this _____ day of June, 2015.

THE CITY OF EL PASO

Tomás González
City Manager

ATTEST:

Richarda Duffy Momsen
City Clerk

Approved as to Form:

Bertha A. Ontiveros
Senior Assistant City Attorney

RESCUE MISSION OF EL PASO, INC.

Blake Barrow
Chief Executive Officer

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2015, by Tomás González, City Manager of the City of El Paso, Texas, on behalf of said City.

Notary Public in and for the State of Texas

Seal

ACKNOWLEDGEMENT

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on this ____ day of _____, 2015, by Blake Barrow, Chief Executive Officer, Rescue Mission of El Paso, Inc., on behalf of said City.

Notary Public in and for the State of Texas

Seal