



City Council Agenda Item

City Council Meeting Date: April 16, 2024

TO: Honorable Mayor and City Council Members

FROM: Jeff Malawy, City Attorney
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SUBJECT: Adoption of Resolution No. 6646(24) to Schedule a Protest Hearing on Whether to Submit the Question of Discontinuing the Public Park Use of Approximately 82 Acres Including Ken Adam Park (APN 095-070-008) to City Voters at the November 5, 2024, General Municipal Election, in Order to Allow for Other Educational and Recreational Uses, or Open Space Uses, or Both; Declaring the Public Interest or Convenience Requires Discontinuing the Public Park Use; and Declaring Intent to Call a Special Election on the Discontinuance; Approval of a Reimbursement Agreement with Pale Blue Dot Ventures, Inc., Regarding Election Costs; Adoption of Resolution No. 6647(24) Declaring The Site Is Exempt Surplus Land

Recommendation:

Staff recommends the City Council consider whether to adopt Resolution No. 6646(24) (Attachment 1) to schedule a protest hearing for Tuesday, May 21, 2024, on whether to submit the question of discontinuing the public park use of approximately 82 acres of City-owned land including Ken Adam Park to City voters at the November 5, 2024, General Municipal Election, in order to allow for other educational and recreational uses, or open space uses, or both; and declaring the public interest or convenience require discontinuing the public park use and declaring intent to call the election.

If the City Council decides to adopt Resolution No. 6646(24), then staff recommends the City Council approve the reimbursement agreement with Pale Blue Dot Ventures, Inc., to reimburse the City for the costs of calling and holding the election (Attachment 2), and adopt Resolution No. 6647(24) declaring the site to be exempt surplus land under the Surplus Land Act (Attachment 3).

Background:

The City owns an approximately 82-acre parcel (APN 095-070-008) generally located south of Hancock Drive and west of Highway 1 (the Site), which contains open space and recreational uses and the area operated as a public park named Ken Adam Park.

The City acquired the Site from the federal government in 1984. The deed from the federal government specified restrictions on usage of the Site. An amended deed was recorded on June 8, 1999, amending the usage restrictions, which remain today and limit the Site to be used for educational and recreational purposes, for open space, or for both.

The City currently operates Ken Adam Park on the Site. Ken Adam Park features a large group picnic area, a children's playground, individual picnic areas, a nature trail, horseshoes, a flag monument, and restroom facilities.

The City has, in the past and currently, considered use of the Site for other educational and recreational purposes or open space purposes, other than the uses that currently exist on the Site and other than a public park. Specifically, a number of space-oriented museum or educational developments have been proposed for the Site. Other non-public-park uses could also be considered and explored in the future, such as school uses or expansion of the college, libraries, private athletic training/field businesses, or other types of museums or educational developments. At this time, no entitlement applications have been filed with the City for any such other uses, and the City has not solidified any plans for use of the site for other educational and recreational, or open space, purposes.

Currently for example, in July 2019, the City entered into a Memorandum of Understanding (MOU) with Pale Blue Dot Ventures, Inc. (Pale Blue Dot) to undertake negotiations for a possible sale and development of the Site for a potential space-themed educational and recreational development. Negotiations are ongoing and the parties are making progress, but no entitlement applications for any development project have been filed at this point, nor has any sale been finalized or approved. The Disposition and Development Agreement setting the terms for an eventual sale and development of the Site is currently planned for consideration and possible approval by the City Council at the May 21, 2024, City Council meeting.

Discussion:

In order for any land operated as a public park to be used for a new, non-public-park use, state law requires voter approval of discontinuance of the public park use.

Voter approval of discontinuing the public park use of the Site does not require the City to cease operating the Site as a public park, nor to approve or establish any other uses on the Site, nor to sell or dispose of the Site. Rather, voter approval of discontinuing the park use allows for the possibility of non-public-park uses, such as the proposed Pale Blue Dot space-themed development, to be considered for the Site.

In that way, voter approval of discontinuance of the public park use would facilitate exploration of use, development, and/or sale of the Site for educational and recreational purposes other than the existing public park use, or other open space purposes, or both, including a possible sale to Pale Blue Dot for development of a space-themed educational and recreational development.

Decisions whether to change the use of the Site, approve entitlements for any proposed use on the Site, to change the zoning of the Site, and/or to sell or dispose of the Site will remain solely within the discretion of the City Council even if the park use designation is removed from the Site.

Although the City Council will review and consider proposed ballot question language at a future meeting (if such a meeting is scheduled), the ballot language at this time is planned to be similar to the following:

“Shall the City discontinue the public park use of the 82-acre parcel containing Ken Adam Park, in order to allow other educational and recreational uses, or other open space uses, or both, to be considered for establishment on the Site, including a possible sale to Pale Blue Dot Ventures, Inc., for a proposed space-themed educational and recreational development?”

Election Process

Government Code sections 38440 through 38462 establish a two-step process the City can use to call an election on whether to discontinue use of a City park so it can be considered for other uses.

The first step, before the City Council tonight, is adoption of a resolution that:

- 1) Declares the public interest or convenience requires discontinuing use of the land as a public park; and
- 2) Declares the City Council intends to call a special election on the issue; and
- 3) Sets a public hearing to consider public protests before calling the election.

Adoption of Resolution No. 6646(24) (Attachment 1) would meet those requirements.

The second step would be a public hearing to consider any public protests to the discontinuance of the park use. Staff is recommending the public hearing be held on May 21, 2024. In the event any member of the public protests at the public hearing, the City Council may not call the election unless the protest is overruled by a two-thirds vote of the City Council (four out of five Council Members).

The public hearing requires at least 20 days notice to the public and must take place no less than 30 and no more than 60 days after the first step. Based on a proposed November 5, 2024, election date, the last possible City Council meeting date for the public hearing to be held is likely July 16, 2024. The County has not yet issued its final deadline for consolidating city measures, but July 16 is likely the last possible City Council meeting date. If the City Council desires to hold the public hearing later than June 4, 2024, then tonight’s item should be continued to a future meeting.

Reimbursement Agreement

A proposed reimbursement agreement (Attachment 2) would require Pale Blue Dot Ventures, Inc., to reimburse the City for the cost of the election. The agreement would require Pale Blue Dot to deposit at least \$50,000 from which the City could deduct all costs, fees, and expenses connected to the election. This would include direct costs, staff time, legal costs, and costs of any consultants. Pale Blue Dot is required to replenish the deposit if the balance becomes low and insufficient to cover ongoing costs. The agreement also requires Pale Blue Dot to indemnify and defend the City in the event of any legal challenge to the election.

The reimbursement agreement does not require the City to commit in any way to Pale Blue Dot Venture's proposed project and does not restrict the City's discretion in any way with regard to its consideration of the project. The reimbursement agreement would not restrict the City's ability to approve, conditionally approve, or deny the project. Furthermore, the City would not be under any obligation to reimburse Pale Blue Dot Ventures for any of the monies spent by the City with regard to the election if the vote is to deny the discontinuance of the park use or the City ultimately decides to deny any project for the site proposed by Pale Blue Dot Ventures.

Exempt Surplus Land

Under the California Surplus Land Act (Gov. Code §§ 54220 *et seq*), prior to taking any action to dispose of or negotiate for the sale of city-owned real property, a local agency must advertise that property to affordable housing developers and other entities for their interest in the property.

However, there are a number of situations where a property is exempt from the Surplus Land Act. The exemptions under the Act include properties subject to valid legal restrictions that are not imposed by the local agency that would make housing prohibited (per Gov. Code § 54221(f)(1)(G)).

The 82-acre Site is exempt surplus land because it is subject to the federal government deed restrictions which restrict usage of the Site to educational or recreational purposes, or open space purposes, or both. That is a valid legal restriction not imposed by the City, which makes housing a prohibited use of the Site.

When a city determines a property is exempt from the Surplus Land Act, the city council must declare the property "exempt surplus land" and support such determination with written findings. Staff recommends the City Council adopt Resolution No. 6647(24) declaring the Site exempt surplus land in connection with consideration of any discontinuance of the public park use of the Site to allow for consideration of other uses, including possible sale of the Site.

Fiscal Impact:

The City's staff costs, legal costs, and consultant costs for calling and holding the election, and the direct costs charged by the County for holding the election, are covered by Pale Blue Dot under the proposed reimbursement agreement on the agenda tonight.

Conclusion:

The City Council's decision tonight does not call the election. Rather, adoption of Resolution No. 6646(24) would schedule a public hearing at a future meeting to consider public protests, and if such protests are overruled by a two-thirds vote of the City Council then the City Council may call the election. Voter approval of discontinuance of the public park use would facilitate exploration of use, development, and/or sale of the Site for educational and recreational purposes other than the existing public park use, or other open space purposes, or both, including a possible sale to Pale Blue Dot for development of a space-themed educational and recreational development.

Respectfully submitted,



Jeff Malawy, City Attorney

- Attachments: 1) Resolution No. 6646(24) Scheduling Public Hearing
2) Reimbursement Agreement
3) Resolution No. 6647(24) Declaring Exempt Surplus Land