

## RESOLUTION 17-121

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, PROVIDING FOR AN EXTENDED COMPLIANCE PERIOD ON THE PART OF CHP ENTERPRISES, INC., WITH RESPECT TO REQUIREMENTS OF CONDITIONAL USE PERMIT NO. 881-11 TO CEASE ALL BUSINESS ACTIVITIES OCCURRING ON THAT CERTAIN REAL PROPERTY WHOSE COMMON STREET ADDRESSES ARE 21126, 21140, 21212 SOUTH AVALON BOULEVARD AND 640 EAST 213TH STREET IN THE CITY OF CARSON

**WHEREAS**, CHP Enterprises, Inc. ("CHP") currently leases the real property located at 21126, 21140, 21212 South Avalon Boulevard and 640 East 213<sup>th</sup> Street in the City of Carson ("Subject Property") from the Kott Family Trust; and

**WHEREAS**, CHP uses the Subject Property for the auction of vehicles, equipment, furniture, and other related items under the business name "Ken Porter Auctions," together with the sale of classic, antique, or specialty automobiles under the name of "Back in the Day Classics" (collectively "Ken Porter"); and

**WHEREAS**, CHP's use of the Subject Property was approved until December 31, 2016 in 2011 by the City's Conditional Use Permit No. 881-11 ("the Initial CUP"), and

**WHEREAS**, CHP filed an application to extend the Initial CUP for three additional years in 2016 as Conditional Use Permit No. 1016-16 ("CUP Extension"); and

**WHEREAS**, on or about December 13, 2016, the City's Planning Commission ("Planning") approved the CUP Extension; and

**WHEREAS**, the CUP Extension approved by Planning was appealed to the City Council; and

**WHEREAS**, on or about February 7, 2017, the City Council determined to reverse the Planning Commission's decision approving CHP's application for a CUP Extension, thereby revoking CHP's CUP Extension; and

**WHEREAS**, on or about March 30, 2017, The City issued Citation No. 12650 to Robert Eugene Covoreau ("Covoreau"), an employee of Ken Porter, for violating Carson Municipal Code ("CMC") § 6310, a misdemeanor, in unlawfully commencing or conducting an unlicensed business in the City; and; and

**WHEREAS**, on or about May 4, 2017 the City filed a Misdemeanor Complaint, Case No. 7CS02037 ("Complaint") against Covoreau in the Superior Court of the State of California, County of Los Angeles South Central District for allegedly violating CMC § 6310; and

**WHEREAS**, on or about June 2, 2017 CHP filed a Verified Petition for Writ of Mandate ("Petition") against the City challenging the City Council's decision to reverse the Planning

Commission's decision approving CHP's application for a CUP Extension ("Ken Porter Dispute"); and

**WHEREAS**, on or about July 5, 2017, the City filed an Answer to CHP's Petition ("Answer"); and

**WHEREAS**, City and CHP desire to fully and finally resolve the CUP Extension Request dispute ("Dispute") to avoid litigation between them arising out of such dispute, and without acknowledging fault or responsibility in connection with the positions of any party in such disputes.

**NOW THEREFORE**, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, does hereby FIND, DETERMINE and ORDER AS FOLLOWS:

**Section 1.** The foregoing recitals are true and correct and incorporated herein by this reference.

**Section 2. Approval of Compliance Period Directed to CHP Enterprises, Inc.**

Subject to CHP's agreement to end the temporary use of Subject Property and relocate all unpermitted business activities as set forth in Section 3 below, City hereby approves a compliance period from July 1, 2017 until December 31, 2018 ("Compliance Period").

**Section 3. Conditions of Compliance Period**

In resolution of the Dispute, the City Council issues the following compliance order:

(a) CHP shall terminate, cease, and desist from all uses on the Subject Property on or before the close of normal business hours on December 31, 2018 (the "Compliance Deadline"). Failure to meet the Compliance Deadline shall subject CHP to enforcement actions as well as such other legal remedies as may be afforded City by law; and

(b) CHP shall, during the term of this Resolution, comply with all remaining conditions of approval in the Initial CUP to the reasonable satisfaction of City.

(c) In consideration of resolution of the Disputes, CHP shall, within ten (10) calendar days from the date of this Resolution, deposit with City, to be held in a separate City interest bearing account, a bond or other irrevocable instruction having a penal value of One Hundred Thousand Dollars (\$100,000.00) as and for a "Surety Bond."

(d) CHP shall stipulate that the City's May 4, 2017 Misdemeanor Complaint against Covoreau shall be amended to name CHP and Ray Claridge ("Claridge"), CHP's President and sole shareholder, as additional Defendants and the City agrees to dismiss Covoreau. In accordance with the City's Conditional Plea, CHP and Claridge shall all plead "No Contest" to one Count, each, for violating CMC § 6310, a misdemeanor, as described in the City's Complaint.

(e) CHP and Claridge shall stipulate to a December 31, 2018 date of sentencing for violating CMC § 6310. If December 31, 2018 is unavailable on the court calendar, CHP and

Claridge shall stipulate to set the date of sentencing for the first available court date in the month of January in 2019.

(f) CHP shall withdraw any and all pending applications to extend the Initial CUP to extend its land use activities at or on the Subject Property.

#### **Section 4. City's Right to Enforcement; Miscellaneous Provisions.**

(a) Subject to the City's election, in its sole and unfettered discretion, to extend the Compliance Deadline, as set forth in Section 5, below, should CHP fail to meet any Compliance Deadline, the \$100,000 Surety Bond shall be forfeited, in its entirety, to the City. The City may unilaterally withdraw from the Surety Bond, with such deduction(s) timely and reasonably documented by City and made available for CHP's review.

(b) Failure to satisfy the requirements set forth herein shall expose Claridge and CHP representatives to a fine up to one-thousand dollars (\$1,000), or by imprisonment in the County Jail for a period up to six (6) months, or by both such fine and imprisonment. Subject to the City's election, in its sole and unfettered discretion, to extend the Compliance Deadline, as set forth in Section 5, below, should CHP fail to meet any Compliance Deadline:

- (i) Count One of the City's Complaint shall remain a Misdemeanor for all named parties; and
- (ii) Named Defendants shall be subject to a sentence of the maximum fine and jail time for violating CMC § 6310; and
- (iii) The Court may order probation and/or other post-adjudicative measures to ensure compliance of this Settlement Agreement.

(c) In the event that any provision of this Resolution is rescinded or revoked by City, or declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the entire Resolution shall be null and void and shall subject CHP to such enforcement action(s) as well as such other legal remedies as may be afforded the City by law.

(d) In the event the City is required to take action to enforce this Resolution, or in the event this Resolution is declared invalid, illegal or otherwise unenforceable by the court of competent jurisdiction and the City is required to commence an enforcement proceeding(s) against Ken Porter, the City shall be reimbursed by CHP for all costs and reasonable attorneys' fees incurred in such action or enforcement proceeding(s).

#### **Section 5. City's Discretion to Extend Compliance Deadline.**

(a) In the event that CHP is unable to meet the Compliance Deadline, City may, in its sole and unfettered discretion, extend the Compliance Deadline by the period(s) of time up to one (1) additional calendar year (an "Extended Compliance Deadline").

(b) Such discretion shall be exercised by the Carson City Council at a duly noticed public meeting and provided that CHP make(s) a written request to extend such deadline(s) not later than ninety (90) calendar days prior to the Compliance Deadline.

(c) During the term of this Resolution, or any Extended Compliance Deadline, CHP shall pay to the City all normal and customary fees and charges applicable to all permits necessary for the use, and any taxes, fees, and charges hereafter imposed by City in connection with the use which are standard and uniformly-applied to similar entities in the City.

#### **Section 6. Return or Use of Surety Bond.**

(a) Except as provided hereinabove:

- (i) Upon the compliance with and expiration of any Compliance Deadline period, or upon termination of any litigation arising out of or related to this Resolution, or upon termination of any enforcement proceeding(s) by the City to compel the cessation of the CHP operations on or at the Property, then
- (ii) City shall return or refund to CHP the balance of the Surety Bond, if any, not drawn upon by City as authorized hereinabove. All non-forfeited funds shall be returned to CHP within thirty (30) calendar days of the full completion of all terms of this resolution.

#### **Section 7. Reduction of Charges Under Conditional Plea.**

(a) Except as provided hereinabove:

- (i) Upon the compliance with and expiration of any Compliance Deadline period, or upon termination of any litigation arising out of or related to this Resolution, or upon termination of any enforcement proceeding(s) by the City to compel the cessation of the CHP operations on or at the Property, then
- (ii) The City shall reduce the Count for all Defendants named in the City's Amended Complaint to an infraction for all parties.

#### **Section 8. Resolution Exempt From CEQA.**

(a) The City Council finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 1 Categorical Exemption, Existing Facilities, pursuant to Section 15301 of the CEQA Guidelines.

(b) The City Council further finds and determines that this Resolution is exempt from the requirements of the California Environmental Quality Act as a Class 21 Categorical Exemption, Enforcement Actions by Regulatory Agencies, pursuant to Section 15321 of the CEQA Guidelines.

**Section 9. CHP Indemnification.**

CHP shall indemnify, protect, defend, and hold harmless City, and its respective officials, officers, employees, agents, elected boards, commissions, departments, agencies, and instrumentalities thereof, from any and all actions, suits, claims, demands, writs of mandamus, liabilities, losses, damages, penalties, obligations, expenses, and any other actions or proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures) asserted by third parties against City that may arise from or relate to adoption of this Resolution (herein the “**Claims and Liabilities**”), whether such Claims and Liabilities arise out of or under planning and zoning laws, the Subdivision Map Act, Code of Civil Procedure §§ 1085 or 1094.5, or any other federal, state, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of September, 2017,

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Mayor

ATTESTED:

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City Clerk

APPROVED AS TO FORM:

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City Attorney