



## Legislation Details (With Text)

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**Title:** CONSIDER ADOPTION OF COMPLIANCE RESOLUTION NO. 17-121 & APPROVAL OF A SETTLEMENT AGREEMENT BY AND BETWEEN THE CITY OF CARSON & CHP ENTERPRISES, INC. (CITY COUNCIL)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. (KEN PORTER) Compliance Resolution.pdf, 2. (KEN PORTER) Settlement Agreement.pdf

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## Report to Mayor and City Council

Tuesday, September 05, 2017

Discussion

### SUBJECT:

**CONSIDER ADOPTION OF COMPLIANCE RESOLUTION NO. 17-121 & APPROVAL OF A SETTLEMENT AGREEMENT BY AND BETWEEN THE CITY OF CARSON & CHP ENTERPRISES, INC. (CITY COUNCIL)**

### I. SUMMARY

Presented for City Council consideration is Compliance Resolution No. 17-121 and a Settlement Agreement between the City and CHP Enterprises, Inc., addressing and resolving certain issues with respect to Conditional Use Permit No. 881-11, Conditional Use Permit No. 1016-16, and Misdemeanor Complaint, Case No. 7CS02037, regarding the real property located at 21126, 21140, 21212 South Avalon Boulevard and 640 East 213<sup>th</sup> Street in the City of Carson.

The Compliance Resolution allows an additional period of time, until December 31, 2018, within which to either discontinue the existing use(s) at these properties and includes a conditional plea of "no contest" to Misdemeanor Complaint, Case No. 7CS02037. In addition, the Settlement Agreement requires the posting of a \$100,000 bond to assure timely compliance with the terms and conditions of the Compliance Resolution.

### II. RECOMMENDATION

1. WAIVE further reading and ADOPT Resolution No. 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;" and
2. APPROVE that certain SETTLEMENT AGREEMENT by and between the City of Carson, CHP Enterprises, Inc., and AUTHORIZE THE CITY MANAGER TO EXECUTE the same following approval as to form by the City Attorney.

### **III. ALTERNATIVES**

1. DIRECT staff and the City Attorney to further review and revise the either or both the Compliance Resolution and/or the Settlement Agreement.
2. TAKE such other and further actions as the City Council deems appropriate consistent with the requirements of law.

### **IV. BACKGROUND**

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 ("Property") from the Kott Family Trust. CHP uses the 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").

CHP's use of the Property was approved until December 31, 2016 in 2011 by the City's Conditional Use Permit No. 881-11 ("the Initial CUP"). CHP filed an application to extend the Initial CUP for three additional years in 2016 as Conditional Use Permit No. 1016-16 ("CUP Extension"). In December, 2016, the City's Planning Commission approved the CUP Extension. This CUP Extension was then appealed to the City Council. On appeal, the City Council determined to reverse the Planning Commission's decision approving the CUP Extension, thereby revoking the same.

The consequence of this action resulted in the commencement of a code enforcement action to compel compliance with the expiration of the Original CUP and a cessation of the uses on the Property. The City issued Citation No. 12650 for violating Carson Municipal Code ("CMC") § 6310, a misdemeanor, in unlawfully commencing or conducting an unlicensed business in the City. In May, 2017, the City filed a Misdemeanor Complaint, Case No. 7CS02037 in Superior Court for allegedly violating CMC § 6310.

For its part, 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 the CUP Extension on or about July 5, 2017, the City filed an Answer to CHP's Petition. Since then the parties have met and conferred and reached agreements on

resolving their various disputes in the manner summarized below.

First, the City Council is asked to adopt a Compliance Resolution which provides that, in return for meeting certain conditions of a Settlement Agreement and the posting of a \$100,000 bond to secure such compliance, CHP shall be afforded an extended compliance period under the Original CUP from and after July 1, 2017 and through and including December 21, 2018 in which to “terminate, cease, and desist from all uses on the . . . Property.” During the term of the Compliance Resolution, CHP will be obligated to do the following:

1. CHP shall comply with all remaining conditions of approval in the Initial CUP to the reasonable satisfaction of City.
2. CHP shall 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.” Should CHP fail to meet the Compliance Deadline, the \$100,000 Surety Bond shall be forfeited, in its entirety, to the City.
3. 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. 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.
4. 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.
5. CHP shall withdraw any and all pending applications to extend the Initial CUP to extend its land use activities at or on the Property.

Finally, the Compliance Resolution provides that, failure to satisfy the requirements of the resolution 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.

Next, the Settlement Agreement between the parties reiterates the requirement of the Compliance Resolution and further provides that the Petition filed by CHP against the City shall, upon satisfaction of the requirements of the Compliance Resolution and the return to CHP of any non-forfeited bond funds, to dismiss its Petition against the City, with prejudice, with each party bearing its own costs and legal fees.

## **V. FISCAL IMPACT**

All parties to the Settlement Agreement agree to bear their own costs and attorneys’ fees in negotiating the settlement summarized above.

## **VI. EXHIBITS**

1. Resolution No. 12-121 (pages 4-8)
2. Settlement Agreement (pages 9-13)

Prepared by: City Attorney