



## Legislation Text

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**File #: 70633, Version: 1**

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### **Fiscal Note**

This resolution authorizes a third amendment to the development agreement associated with the project commonly known as the Judge Doyle Square Development Project. The resolution changes the real estate transaction from a ground lease to a purchase of the Block 105 Apartments parcel. The purchase price will total \$4.4 million and the proceeds will be deposited in the Parking Utility enterprise fund.

On June 5, 2018, the Common Council adopted RES-18-00403, File ID #51484, which authorized appropriations for the construction of the above ground Podium component of the building on Block 88 as part of the Judge Doyle development. The \$11 million cost to design and construct the podium and above-ground parking component of the residential building on Block 88 was financed from the Parking Utility reserves, to be repaid, with interest, from the proceeds associated with development on Blocks 88 and 105.

Proceeds from Block 88 (\$5 million paid at closing and \$1 million to be paid 15 years from the date of issuance of certificate of occupancy of the residential building on Block 88), were deposited in the Parking Utility fund through RES-19-00818, Legistar #58250, adopted December 3, 2019. Proceeds from the sale of Lot 1 of Block 105 total \$3.6 million and were deposited in the Parking Utility fund through RES-21-00673, Legistar #67092, adopted October 5, 2021. These amounts combined with the \$4.4 million from this resolution total \$13 million (with another \$1 million to be paid in the future) to the Parking Utility fund.

The Parking Utility enterprise fund is expected to end 2022 with fund balance reserves of \$10.7 million. Deposit of proceeds from the sale of this lot as authorized under this resolution will increase those anticipated reserves to \$15.1 million at year-end. Due to the economic effects of the pandemic, these estimated reserves are approximately \$6.5 million below 2019 levels.

This resolution includes no city appropriations.

### **Title**

Authorizing the City's execution of a Third Amendment to Development Agreement, together with other associated agreements and documents, between the City, Beitler Real Estate Services, LLC and MDI Judge Doyle Square Apartment, LLC pertaining to the property located at 114 E. Wilson Street, which is part of the project commonly known as the Judge Doyle Square Development Project.

### **Body**

WHEREAS, on April 19, 2016, the City's Common Council adopted RES-16-00317, File ID #42435, to approve the selection of Beitler Real Estate Services LLC (the "Developer") as a part of the Judge Doyle Square Development Team for the project commonly known as Judge Doyle Square ("Project"); and

WHEREAS, on July 5, 2016, the City's Common Council adopted RES-16-00510, File ID #43477, to authorize the Mayor and City Clerk to execute a Development Agreement and Ground Lease with the Developer for the Project; which was executed by the parties on July 12, 2016; and

WHEREAS, on January 8, 2019, the City's Common Council adopted RES-19-00038, File ID #53530, authorizing an amendment to the Development Agreement by that certain First Amendment to Development Agreement, executed by the parties on January 15, 2019 (together the "Development Agreement"), which, in part, shortened the development timelines for the Developer; and

WHEREAS, the Developer agreed to commence construction on the Block 105 Apartments, as defined in the Development Agreement, before December 17, 2022; and

WHEREAS, the Developer desires to assign its development rights in the Block 105 Apartments to MDI Judge Doyle Square Apartment, LLC (the "Assignee") in order to construct the Block 105 Apartments; and

WHEREAS, the Developer therefore requires another amendment to the Development Agreement to authorize the Assignment, the change of the real estate transaction from a ground lease to a purchase of the Block 105 Apartments parcel, and other necessary changes outlined herein; and

WHEREAS, the \$11 million cost to design and construct the podium and above-ground parking component of the residential building on Block 88 was financed from the Parking Utility reserves, to be repaid, with interest, from the proceeds associated with development on Blocks 88 and 105 (see RES-18-00403, Legistar #51484, adopted June 5, 2018), and;

WHEREAS, proceeds from the sale of the podium, above-ground parking component, and air-rights on Block 88, totaled \$6 million (\$5 million paid at closing and \$1 million to be paid 15 years from the date of issuance of certificate of occupancy of the residential building on Block 88), which were deposited in the Parking Utility enterprise fund (see RES-19-00818, Legistar #58250, adopted December 3, 2019), and;

WHEREAS, proceeds from the sale of Lot 1 of Block 105, net of transaction costs, totaled approximately \$3.6 million, which were deposited in the Parking Utility enterprise fund (see RES-21-00673, Legistar #67092, adopted October 5, 2021), and;

WHEREAS, the proceeds from the sale of Lot 2 of Block 105 in this resolution will total an estimated \$4.4 million, which when added to the sale on Block 88 and Block 105 Lot 1, provide a total of \$13 million (with another \$1 million to be paid in the future) associated with development on the two blocks, and;.

NOW THEREFORE BE IT RESOLVED, that the Common Council hereby authorizes a Third Amendment to the Development Agreement with Beitler Real Estate Services, LLC and MDI Judge Doyle Square Apartment, LLC on substantially the following terms and conditions:

1. **Definitions.**

(a) From and after the Assignment Date, the Development Agreement is amended to include (or amend as the case may be) the following definitions:

(i) "Apartment Developer" means Assignee.

(b) The definition of Private Development Closing Deadline at it relates to the Block 105 Apartment is December 17, 2022.

2. **Assignment.** To the extent required under the Development Agreement, City hereby consents to and approves of the Developer's Assignment of the Development Agreement (pertaining to its interest in the Block 105 Apartment) to Assignee.

3. **Purchase of Block 105 Apartment In Lieu of Ground Lease.** From and after the Assignment Date, the Development Agreement is amended to provide that in lieu of a Ground Lease for the Block 105 Apartment, City shall sell to Apartment Developer (or its designee) its fee interest in the Block 105 Apartment on terms and conditions of that certain Purchase and Sale Agreement between City and Apartment Developer (the "Apartment Purchase and Sale Agreement"). To the extent there is a conflict between the Apartment

Purchase and Sale Agreement and the Development Agreement, the terms and conditions of the Apartment Purchase and Sale Agreement shall control.

4. **Conditions Precedent to Private Development Commencement.**

(a) From and after the Assignment Date, Section 6.2(c) of the Development Agreement as it pertains to the Block 105 Apartment shall be deleted and replaced with the following:

“(c) Execution of the Apartment Purchase and Sale Agreement by the City and consummation of the transaction contemplated therein, including delivery by the City and any other third parties to Assignee of all documents contemplated therein.”

(b) The following Private Conditions Precedent are added to Section 6.2 of the Development Agreement:

“(g) Execution of that certain Parking Lease between Apartment Developer and the City, as contemplated in the Apartment Purchase and Sale Agreement.

(h) Execution of that that certain Reciprocal Crane Swing, Shoring Materials and Flashing and Access Easement Agreement between Apartment Developer (or its designee) and 123 East Doty Street Corp., in form and substance acceptable to Apartment Developer.

(i) Execution of that that certain Reciprocal Crane Swing, Shoring Materials and Access Easement Agreement between Apartment Developer (or its designee) and the appropriate third party property owner, in form and substance acceptable to Apartment Developer.”

5. **Restrictive Covenant.** Section 12 of the First Amendment is hereby deleted and shall not be applicable to the Block 105 Apartment.

6. **Miscellaneous.** Except as set forth in this Third Amendment, all of the terms and conditions of the Development Agreement shall remain in full force and effect and are hereby incorporated herein by reference. In the event of a conflict between the terms and conditions of this Third Amendment and the Development Agreement, this Third Amendment shall govern and control. Each capitalized term not defined in this Third Amendment shall have the meaning ascribed to it in the Development Agreement except as otherwise specifically indicated or unless the context clearly indicates to the contrary.

BE IT FURTHER RESOVED, that the Mayor and City Clerk are hereby authorized to execute and deliver the Third Amendment to the Development Agreement materially on the terms stated herein, on a form approved by the City Attorney.

BE IT FURTHER RESOLVED, the Mayor and City Clerk are hereby authorized to execute, deliver and record the Purchase and Sale Agreement, Parking Agreement, and any other documents necessary to carry out the

land transaction contemplated in this resolution in a form approved by the City Attorney.

BE IT FINALLY RESOLVED, the proceeds from the sale in this resolution will be deposited in the Parking Utility enterprise fund, and those amounts, along with the proceeds from prior transactions on Blocks 88 and 105, will repay the \$11 million to the Parking Utility, with interest, used to finance the podium and above-ground parking components of the Block 88 development, and provide an additional estimated \$2 million to the Parking Utility enterprise fund (plus \$1 million in the future).