

GARDEN GROVE CITY COUNCIL

RESOLUTION NO. 9088-12

A RESOLUTION OF CITY COUNCIL OF THE CITY OF GARDEN GROVE
REJECTING THE APPEAL FILED BY LORENA RIVERA AND MARTIN ROCHA AND
MAKING CERTAIN OTHER FINDINGS IN CONNECTION THEREWITH

WHEREAS, the Garden Grove Agency for Community Development ("Agency") is a public body corporate and politic and a community redevelopment agency organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, et seq. ("CRL") and has been authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City of Garden Grove, a California municipal corporation ("City");

WHEREAS, the City Council originally adopted the Redevelopment Plan for the Garden Grove Community Project by Ordinance No. 1339 on June 26, 1973 and thereafter amended said Redevelopment Plan and Project Area by City Council Ordinance Nos. 1388, 1476, 1548, 1576, 1642, 1699, 1760, 1971, 2035, 2232, 2304, 2455, 2576, and 2709;

WHEREAS, the Redevelopment Plan for the Garden Grove Community Project, as amended, and the Garden Grove Community Project Area, as amended, are referred to, respectively, as the "Redevelopment Plan" and "Project Area";

WHEREAS, relocation assistance and benefits for eligible persons and businesses in California are governed by and provided for in the California Relocation Assistance Law, Government Code §7260, et seq. ("CRAL") and the implementing regulations promulgated by the California Department of Housing and Community Development set forth in California Code of Regulations, Title 25, Housing and Community Development, Division 1, Chapter 6, §6000, et seq. ("Guidelines"), together the CRAL and Guidelines are referred to as the "Relocation Law";

WHEREAS, the Agency entered into an Option Agreement ("Option Agreement") to acquire that certain real property in the Project Area improved with the Travel Country RV Park property located at 12721 Harbor Boulevard, Garden Grove ("RV Park") from its previous owner in May 2003 and eventually acquired the RV Park in July 2005 for future redevelopment purposes;

WHEREAS, the Agency has owned and operated the RV Park for more than six years and has invested hundreds of thousands of dollars in capital improvements into the RV Park during the term of its ownership;

WHEREAS, the Agency entered into that certain Disposition and Development Agreement ("DDA") with Garden Grove MXD, LLC ("Developer") dated as of May 12, 2009 relating to a proposed redevelopment project in the Project Area on a site that

includes the Travel Country RV Park property and several commercial properties ("Proposed Project Site");

WHEREAS, the project proposed for the Proposed Project Site includes development of an approximately 600-room hotel, with a water park, entertainment or other resort theme uses, along with meeting space, 18,000 gross square feet of restaurant or retail uses, and structured parking ("Proposed Project");

WHEREAS, pursuant to the Relocation Law, specifically Section 6038 of the Guidelines, and in planning for implementation of the Proposed Project and in connection with consideration and action on the DDA the City and Agency caused to be prepared, made available to the public and approved by City Council Resolution on May 12, 2009, that certain Relocation Plan that presents, among other provisions, the plans for and relating to potential displacement of lawful and eligible occupant households from the RV Park ("Relocation Plan");

WHEREAS, on April 13, 2010, the Agency approved a First Amended and Restated Development and Disposition Agreement ("FARDDA") with the Developer that amended the structure of the Agency's financial obligations and expanded the Proposed Project Site by incorporating two adjacent parcels and that includes the amended and restated terms, conditions, provisions and schedule for the Proposed Project;

WHEREAS, on April 13, 2010 the City Council approved an updated relocation plan for the RV Park and one adjacent business ("2010 Relocation Plan"), which plan included updated information pertaining to the occupant households at the RV Park, availability of comparable replacement housing and comparable replacement business locations for the potential displaced residential households/persons and business;

WHEREAS, on June 14, 2011, the City Council approved an updated relocation plan for the RV Park and one adjacent business ("2011 Relocation Plan"), which plan included updated information pertaining to the occupant households at the RV Park, availability of comparable replacement housing and comparable replacement business locations for the potential displaced residential households/persons and business;

WHEREAS, on June 16, 2011, the Agency issued Notices of Eligibility and Conditional Entitlement ("NOE") to each of the then-occupants of the RV Park, setting forth the relocation benefits to which each occupant household is entitled, including, but not limited to, moving expenses and replacement housing assistance;

WHEREAS, on June 16, 2011, the Agency issued 90-Day Notices to Vacate and 90-Day Notices of Termination of Tenancy to each of the then-occupant households of the RV Park;

WHEREAS, due to certain legal proceedings and orders in the Orange County Superior Court case No. 30-2009-00291597-CU-MC-CJC, *Limon v. City of Garden Grove*, the effective date of the Notices to Vacate was postponed until January 23, 2012;

WHEREAS, the Agency and its relocation consultant, Overland Pacific & Cutler ("OPC"), are actively working to relocate each of the RV Park occupant households;

WHEREAS, the occupants of Space number 98, Lorena Rivera and Martin Rocha (collectively, "Rocha household") dispute the replacement housing assistance amounts set forth in the NOE issued to the Rocha household;

WHEREAS, on May 1, 1973, the Agency adopted by Resolution the "Relocation Services for Homeowners and Tenants" establishing certain procedures for the provision of relocation assistance to households displaced by the Agency and appeals from relocation assistance decisions ("Procedures");

WHEREAS, pursuant to the Procedures, the Rocha household appealed the eligibility determinations set forth in the NOE for the household to the City Manager, there being no Assistant City Manager-Urban Development;

WHEREAS, pursuant to the Procedures, the Rocha household now appeals the eligibility determinations set forth in the NOE to the City Council on two grounds: (i) the size of the unit for which the household qualifies based on adopted occupancy standards (which standards the Agency has already increased once to provide greater benefits to RV Park occupants) and (ii) the monetary amount of the benefit;

WHEREAS, the City Council has reviewed the NOE, the appeal documents filed by the Rocha household, the staff report dated concurrently herewith and all attachments thereto, and further considered public comment (both oral and written), if any, and the City Council determines that the benefits set forth in the NOE are in accord with the requirements and provisions of applicable state and local laws and regulations;

WHEREAS, the City Council undertakes this appellate review of the relocation assistance determination with regard to the Rocha household pursuant to express terms of the Procedures and not as the "successor agency" as that term is defined in AB1x26 (Blumenfield, 2011); and

WHEREAS, by this Resolution, the City Council rejects the appeal submitted by the Rocha household and authorizes the City Manager and his designees, to so notify the Rocha household of its decision.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Garden Grove, pursuant to its appellate capacity as set forth in the Procedures, as follows:

Section 1. The foregoing recitals are a substantive part of this Resolution and fully incorporated herein.

Section 2. With regard to the challenge to the size of the unit for which the Rocha household qualifies, the City Council finds and determines that:

(a) The Rocha household, comprised of Ms. Rivera, Mr. Rocha and their son, currently occupies a one room trailer without a separate bedroom. Therefore, the Rocha household's one-room trailer is comparable to a one-bedroom unit based on the 2+1 occupancy standard approved for this project.

(b) The 2+1 occupancy standard adopted for the Project exceeds the standards for decent safe and sanitary dwellings set forth in 23 Cal. Code Regs. § 370.04, which provides that a decent safe and sanitary dwelling is one which:

“[h]as 150 square feet of habitable floor space for the first occupant in a standard living unit and at least 100 square feet of habitable floor space for each additional occupant. The floor space is to be subdivided into sufficient rooms to be adequate for the family. All rooms must be adequately ventilated. Habitable floor space is defined as that space used for sleeping, living, cooking or dining purposes, and excludes such enclosed places as closets, pantries, bath or toilet rooms, service rooms, connecting corridors, laundries, and unfinished attics, foyers, storage spaces, cellars, utility rooms and similar spaces.”

(c) 23 Cal. Code Regs. § 370.04 further provides that a decent safe and sanitary sleeping room is one which has:

(1) At least 100 square feet of habitable floor space for the first occupant and 50 square feet of habitable floor space for each additional occupant;

(2) Lavatory, bath and toilet facilities that provide privacy, including a door that can be locked if such facilities are separate from the room.

(d) The foregoing regulations establish that the occupancy standard for a household of three persons, such as the Rocha household, is 350 square feet of habitable floor space.

(e) State relocation laws and regulations, including the standards quoted above, are applicable to this project versus federal relocation laws and regulations set forth in the Code of Federal Regulations; nonetheless, the occupancy standard adopted for the Project is consistent with the requirements set forth in the Code of Federal Regulations, which provide an occupancy standard of two persons per living and two persons per sleeping area of habitable space (i.e. a 2+2 occupancy standard). The Agency adopted the 2+2 occupancy standard in the Relocation Plan.

(f) After adopting the Relocation Plan, the Agency later increased the occupancy standard for eligible occupant households at the RV Park to the more beneficial standard being applied to all occupant households at the RV Park of 2+1, i.e., one person living and two persons per sleeping area of habitable space.

(g) The CFR standard provides:

(i) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.

(ii) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(h) Based on both the federal and state standards, the Rocha household qualifies for benefits based on a one-bedroom apartment (with a bathroom) of at least 350 square feet in size (excluding the floor area of the bathroom). Each of the referrals provided to the Rocha household by OPC meet this standard.

Section 3. With regard to the challenge to the monetary benefits for which the Rocha household qualifies, the City Council finds and determines that:

(a) The Rocha household bases its challenge to the monetary benefits set forth in the NOE on the argument that the Agency has improperly calculated the base rent used to calculate the Rocha household's rental assistance payments, asserting that the Agency must provide rental assistance payments that are calculated based on residents' monthly rent costs in 2003 at the time the Agency executed the Option Agreement.

(b) Rocha's household argument is inconsistent with the CRAL, which states that the "base monthly rental shall be the lesser of the average monthly rental paid by the displaced person for the 3-month period prior to initiation negotiations or 30 percent of the displaced person's average monthly income." The interpretation of this language advocated in the Appeal ignores the fact that the CRAL specifically acknowledges and

contemplates that public entities may acquire private property without displacing the persons and families residing thereon (25 C.C.R. §6008(f)(3)(F)). Accordingly, for purposes of relocation, the base rent must be determined at the time of the initiation of the negotiations which lead to displacement, not some other initiation of negotiations. Here, the DDA will lead to the displacement of the RV Park's occupants; accordingly, it is the initiation of the negotiations to enter into the DDA on May 12, 2009, which triggered the displacement. It is thus the rent at that time which is properly used to calculate relocation assistance. Any other interpretation would contravene the existing statutory scheme.

Section 4. NOE complies in all respects with the requirements of California law and implementing regulations, including, but not limited to, the CRAL.

Section 5. The City Clerk shall certify to the adoption of this Resolution.

Adopted this 10th day of January 2012.

ATTEST:

/s/ WILLIAM J. DALTON
MAYOR

/s/ KATHLEEN BAILOR, CMC
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Garden Grove, California, at a meeting held on the 10th day of January 2012, by the following vote:

AYES: COUNCIL MEMBERS: (5) BEARD, BROADWATER, JONES, NGUYEN, DALTON
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE

/s/ KATHLEEN BAILOR, CMC
CITY CLERK