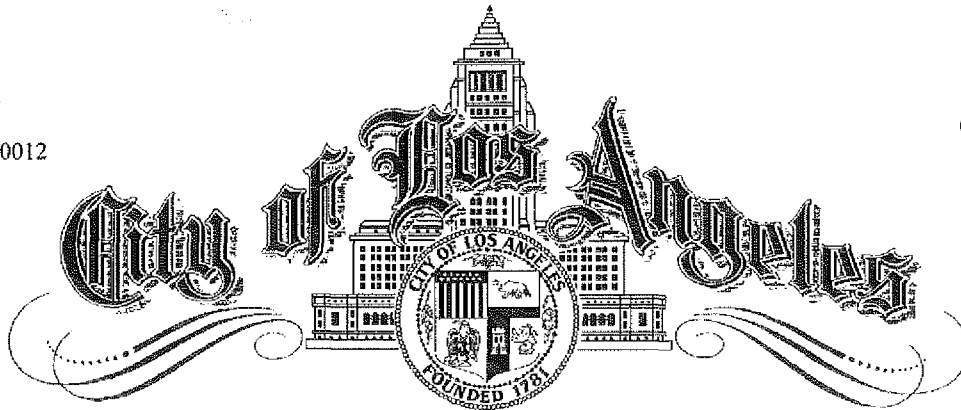


City Hall East  
200 N. Main Street  
Room 800  
Los Angeles, CA 90012

(213) 978-8100 Tel  
(213) 978-8312 Fax  
CTrutanich@lacity.org  
www.lacity.org/atty



**CARMEN A. TRUTANICH**  
City Attorney

**REPORT NO. R 1 1 - 0 3 3 5**

**AUG 2 4 2011**

**REPORT RE:**

**DRAFT ORDINANCE ADDING A NEW ARTICLE 4.7 TO CHAPTER 5 OF DIVISION 5 OF THE LOS ANGELES ADMINISTRATIVE CODE, APPROVING THE RELEASE OF A PLEDGE TO DEDICATE A PORTION OF THE LANCER PROPERTY IN EXCHANGE FOR CASH AND CREATING A TRUST FUND FOR RETENTION AND DISBURSEMENT OF FUNDS**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. This draft ordinance adds a new Article 4.7 to Chapter 5 of Division 5 of the Los Angeles Administrative Code, authorizing the conversion of a pledge to dedicate a portion of the former Lancer property into a pledge to dedicate cash, and creates a trust fund for the receipt and disbursement of those funds for the purpose of creating or enhancing recreational facilities and programming in the vicinity of the former Lancer property.

Charter Findings

The pledge by Libaw-Horowitz Investment Company to dedicate a portion of the former Lancer property for recreational purposes was one element of a 2003 litigation settlement with the Harbor Department. Pursuant to Los Angeles City Charter Section 273, the Harbor Department's settlement of *Libaw-Horowitz Investment Company v. City of Los Angeles* (Superior Court Case No. BC272571), was authorized by the Council in August 2003 (Council File 03-1642.)

On August 4, 2011, the Los Angeles Board of Harbor Commissioners considered the attached draft ordinance, however, and upon finding that the Harbor Department no longer had an interest in the property, deferred approval of the subject agreement to City Council.

### CEQA Findings

The draft ordinance authorizes execution of an agreement that will terminate and release a pledge to dedicate property in exchange for a pledge to donate cash, which cash will be used to improve existing recreational facilities and add programming at parks in the vicinity of the Lancer property. Any physical changes associated with the use of such funds at recreational sites would be subject to separate environmental review by the appropriate Lead Agency under the California Environmental Quality Act (CEQA). The Harbor Department's Director of Environmental Management has determined that the establishment of a trust fund is considered an administrative activity and is exempt from CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

### Background

The Lancer property is a 14-acre parcel bounded by 41st Street, Alameda Boulevard, Long Beach Boulevard and Martin Luther King Boulevard. It was acquired by the City through condemnation in 1986 for the purpose of constructing a trash incinerator known as the Los Angeles City Energy Recovery or "LANCER" project. Alameda-Barbara Investment Company, the predecessor to Libaw-Horowitz Investment Company, owned 11 of the 14 acres. The condemnation judgment provided Alameda-Barbara a first right of refusal should the City determine that the property was no longer needed for public use. By the time the judgment was entered, the Lancer project had been terminated.

In 1994, the City transferred the property to the Harbor Department, which property was then occupied by as many as 400 community gardeners who would later become the association known as South Central Farmers Feeding Families. In late 1994, the Harbor Department commenced negotiations with Libaw-Horowitz Investment Company and by October 1996, a purchase and sale agreement had been drafted and signed by Mr. Libaw and Mr. Horowitz with reassurances from Harbor Department staff that the agreement would be presented to the Board of Harbor Commissioners and the City Council for consideration. The Harbor Department staff did not process the agreement, however, pending the resolution of a lawsuit brought by the State of California regarding use of Harbor Department trust funds. In 2001, the Harbor Department informed Mr. Horowitz that it had decided not to sell the property, but would instead offer it publicly for development under a long-term lease.

Libaw-Horowitz Investment Company filed suit against the City alleging breach of oral agreement, breach of the covenant of good faith and fair dealing, prevention of condition precedent, and declaratory relief. In 2003, a settlement agreement was reached which provided for: (i) sale of the entire Lancer property to Libaw-Horowitz for the sum of \$5,050,000; (ii) the promise by Libaw-Horowitz to dedicate roughly 2.6 acres of the property for recreation and parks purposes; (iii) a sanitary sewer easement in favor of the City; and (iv) dismissal of the claims. The settlement was approved by the Board of Harbor Commissioners on June 23, 2003, and by the City Council on August 13, 2003 (Council File No. 03-1642).

After the sale closed, Libaw-Horowitz gave notice to the occupants that gardening would be terminated. In February 2004, the South Central Farmers Feeding Families, along with numerous individual plaintiffs, filed suit against the City and Libaw-Horowitz asserting causes of action for Waste, Violation of Due Process, Prescriptive Easement, Quiet Title and Violation of the Charter and Administrative Code's procedures for the disposition of real property. Those legal challenges have been resolved in favor of the City and Libaw-Horowitz.

#### Summary of Ordinance Provisions

The ordinance authorizes the Harbor Department's execution of a Termination and Release of Pledge Agreement in exchange for a Cash Pledge Agreement in the amount of \$3,573,365. The ordinance creates a trust fund for the receipt of said funds and directs the Office of the Chief Legislative Analyst to use the funds to make improvements to recreation and park facilities at the Pueblo Del Rio housing project and/or for recreational programming at existing facilities in the vicinity of the former Lancer property including, but not limited to, the Fred Roberts Park and Ross Synder Park.


#### Council Rule 38 Referral

The Harbor Department originally considered this matter based on the fact that the pledge was part of a Harbor Department settlement. The agreement and the proposed ordinance were considered by the Board of Harbor Commissioners in a full public hearing on August 4, 2011, but the Commissioners deferred the decision to City Council as the Harbor Department no longer has any interest in the property. The proposed ordinance has also been forwarded to the Housing Authority and the Department of Recreation and Parks by way of the attached letter.

If you have any questions regarding this matter, please contact Deputy City Attorney Kenneth Mattfeld at (310) 732-3750. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By   
PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:KFM  
Transmittal

**ORDINANCE NO. \_\_\_\_\_**

An ordinance authorizing the Harbor Department of the City of Los Angeles to execute an agreement that will release Libaw-Horowitz Investment Company from its promise to dedicate a portion of the former Lancer property in exchange for a promise to donate cash, and creating a trust fund for the receipt and disbursement of said funds.

**WHEREAS**, in 2003, Libaw-Horowitz Investment Company executed a Pledge Agreement wherein it agreed to dedicate a certain parcel of land more particularly described therein to the City or, alternatively, to a tax-exempt, non-profit community organization selected by the Councilperson for the 9th District that would use and maintain the property for recreation and park purposes; and

**WHEREAS**, the City has concluded that the establishment of an active use park is no longer appropriate because of the parcel's location in an industrial corridor and, considering the City's immediate need for jobs and tax revenues, the City would prefer a cash donation in lieu of property with said donation to be used to improve existing public amenities in the surrounding community.

**NOW THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

Section 1. The execution of a Termination and Release of Pledge Agreement, which includes a Cash Pledge Agreement providing for the payment of \$3,573,365.00 to the City of Los Angeles by Libaw-Horowitz Investment Company is hereby approved.

Sec. 2. A new Article 4.7 is added to Chapter 5 of Division 5 of the Los Angeles Administrative Code to read as follows:

**CHAPTER 5, ARTICLE 4.7  
LANCER SITE RECREATION IMPROVEMENTS TRUST FUND**

Sec. 5.88. Lancer Site Recreational Improvements Trust Fund.

- (a) There is hereby created and established within the Treasury of the City of Los Angeles a special trust fund to be known as the Lancer Site Recreational Improvements Trust Fund (the Fund).
- (b) The purpose of the Fund shall be for the receipt, retention and disbursement of funds in the amount of \$3,573,365.00, to be received pursuant to the Cash Pledge Agreement entered into between the City of Los Angeles and Libaw-Horowitz Investment Company, and any other money received or appropriated for the purposes of the Fund.

- (c) The Fund shall be administered by the Office of the Chief Legislative Analyst. The Office of the Chief Legislative Analyst is hereby authorized to accept funds totaling \$3,573,365 pursuant to the Cash Pledge Agreement.
- (d) Expenditures from the Fund shall be authorized by the Chief Legislative Analyst after consultation with the Housing Authority, the Department of Recreation and Parks, and the Councilperson for the 9<sup>th</sup> District and approval by the City Council.
- (e) Funds shall be used to create or make improvements to recreation and park facilities at the Pueblo Del Rio housing project, which improvements shall be selected from a list developed by the Pueblo Del Rio Resident's Advisory Council, and/or for recreational programming at facilities in the vicinity of the former Lancer property at 41<sup>st</sup> and Alameda Street including, but not limited to, the Fred Roberts Park and Ross Snyder Park.
- (f) All interest or other earnings attributable to monies in the Fund shall be credited to the Fund. Monies not expended from the Fund in any fiscal year shall not revert to the Reserve Fund but shall remain in the Fund.
- (g) The Office of the Chief Legislative Analyst shall report annually to the City Council regarding and identifying all receipts into the Fund and all expenditures out of the Fund and the purposes for such expenditures, until the money in the Fund is exhausted.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that the foregoing ordinance was passed by the Council of the City of Los Angeles at its meeting of \_\_\_\_\_.

JUNE LAGMAY, City Clerk

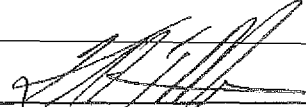
By \_\_\_\_\_ Deputy

Approved \_\_\_\_\_

\_\_\_\_\_  
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney  
Thomas A. Russell, General Counsel

By  \_\_\_\_\_  
KENNETH F. MATTFELD  
Deputy City Attorney

Date: August 29, 2011

File No. \_\_\_\_\_