

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DENYING THE APPEAL FILED BY UNITE HERE LOCAL 11 AND MARLENE PEREZ OF THE GARDEN GROVE PLANNING COMMISSION'S JULY 7, 2022 ACTIONS PERTAINING TO PLANNED UNIT DEVELOPMENT NO. PUD-141-01(A), SITE PLAN NO. SP-107-2022, AND STREET VACATION SV-002-2022.

The Garden Grove City Council does hereby resolve as follows:

I. The City Council finds and determines as follows:

- A. Kam Sang Company proposes to develop the 3.72-acre Site B2 Hotel Project site, located at 12241, 12261, 12271, 12291, 12311 and 12323/12321 Harbor Boulevard, 12246, 12252, 12262, 12282, 12292, 12312, 12322, 12251, 12261, 12281, 12291, 12311, and 12321 Thackery Drive, Assessor's Parcel Nos. 231-471-06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, with a Nickelodeon-themed hotel resort project.
- B. Several discretionary and non-discretionary actions by the City will be required to implement the proposed hotel resort development. The proposed development project and these City actions are collectively referred to as the "Project."
- C. An Initial Study and proposed Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program have been prepared for the Project in accordance with the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.* ("CEQA"), and CEQA's implementing guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*
- D. On July 7, 2022, the Garden Grove Planning Commission held a duly noticed Public Hearing to consider the Initial Study and the Mitigated Negative Declaration and the Mitigation Monitoring and Reporting Program for the Project, along with applications for the following two of the land use approvals that will be required to implement the Project: (1) Planned Unit Development No. PUD-141-01, and (2) Site Plan No. SP-107-2022. Following the July 7, 2022, Public Hearing, the Planning Commission adopted the following two Resolutions:
  1. Resolution No. 6044-22, recommending that the City Council adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project and approve Planned Unit Development No. PUD-141-01(A).

2. Resolution No. 6045-22, approving Site Plan No. SP-107-2022, subject to and contingent upon the effectiveness of a resolution approving Street Vacation No. SV-002-2022 and an ordinance approving Planned Unit Development No. PUD-141-01(A) by the Garden Grove City Council.
- E. On July 7, 2022, the Garden Grove Planning Commission also considered and adopted Resolution No. 6046-22, finding and reporting to the City Council, pursuant to Government Code Section 65402, that the proposed vacation and disposition of Thackery Drive, and a public alley, located on the north side of Twintree Avenue, west of Harbor Boulevard and east of Tamerlane Drive (denominated as Street Vacation No. SV-002-2022), is in conformity with the Garden Grove General Plan. The proposed street vacation is also one of the discretionary actions that will be required to implement the proposed hotel development project.
  - F. On July 27, 2022, UNITE HERE Local 11 and Marlene Perez filed an appeal of the above-described actions taken by the Planning Commission. The appeal generally alleges that the July 7, 2022, Planning Commissions actions violate CEQA and are inconsistent with various goals and policies in the General Plan.
  - G. A Public Hearing was duly called, noticed, and held before the City Council on August 23, 2022, regarding said appeal, the Project, the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program, Planned Unit Development No. PUD-141-01(A), and Site Plan No. SP-107-2022.
  - H. Following said public hearing, and concurrent with the adoption of this Resolution, the Garden Grove City Council (1) adopted Resolution No. \_\_\_\_\_, adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project, (2) introduced and conducted the first reading of Ordinance No. \_\_\_\_\_, approving Planned Unit Development No. PUD-141-01(A), and (3) adopted Resolution No. \_\_\_\_\_, contingently approving Site Plan No. SP-107-2022.
- II. The City Council hereby denies the appeal filed by UNITE HERE Local 11 and Marlene Perez for the following reasons:
- A. UNITE HERE Local 11 does not have standing to appeal. Pursuant to Garden Grove Municipal Code Section 9.32.120, a decision of a hearing body on a land use action may be appealed either by the applicant or an individual. UNITE HERE Local 11 is neither the applicant nor an individual.
  - B. The Planning Commission's recommendation that the City Council adopt a Mitigated Negative Declaration and Mitigation and Monitoring and

Reporting Program for the Project is not an appealable action. The approval of CEQA findings and/or a CEQA document is not a distinct "land use action" that may be separately appealed to the City Council pursuant to Chapter 9.32 of the Garden Grove Municipal Code. Further, the City Council is the decision-making body for the Project under CEQA; the Planning Commission was only acting as an advisory body. The City Council has independently considered and acted on the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

- C. The Planning Commission's recommendation that the City Council approve Planned Unit Development No. PUD-141-01(A) is not an appealable action. The City Council, not the Planning Commission, is the final decision-making body for a zoning amendment. Pursuant to Chapter 9.32 of the Garden Grove Municipal Code, only final decisions of the Planning Commission regarding a land use action may be appealed to the City Council. The City Council, not the Planning Commission, is the final decision-maker regarding the adoption and/or amendment of Planned Unit Development zoning proposals.
- D. The Planning Commission's adoption of Resolution No. 6045-22 is not an appealable action. Approval of Site Plan No. SP-107-2022 is subject to and contingent upon the City Council taking subsequent actions and those actions taking effect. In addition, the Council has independently considered and acted on the Site Plan application. The City Council, not the Planning Commission, is the final decision-making body for Site Plan No. SP-107-2022. Pursuant to Chapter 9.32 of the Garden Grove Municipal Code, only when the Planning Commission's action on a land use application is the final action may it be appealed to the City Council.
- E. The appeal regarding the proposed land use actions is moot because the City Council has independently considered and taken action on Planned Unit Development No. PUD-141-01(A) and Site Plan No. SP-107-2022, along with the associated Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.
- F. The Planning Commission's adoption of Resolution No. 6046-22, finding and reporting to the City Council, pursuant to Government Code Section 65402, regarding conformity of the proposed Street Vacation No. SV-107-2022 with the General Plan, is not an appealable action. A street vacation is not a "land use action" appealable pursuant to Chapter 9.32 of the Garden Grove Municipal Code. Further, the Planning Commission only reported findings to the City Council. The City Council, not the Planning Commission, is the decision-maker regarding the proposed Street Vacation itself and has not yet taken final action.
- G. If any of the challenged Planning Commission actions are determined to be appealable and ripe for adjudication, the City Council hereby denies

the appeal based on the facts, findings and reasons stated in Resolution No. \_\_\_\_\_, Ordinance No. \_\_\_\_\_, Resolution No. \_\_\_\_\_, the adopted Mitigated Negative Declaration, and the administrative record of these proceedings.