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DAVID R. MARTIN



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Date: April 15, 2021

To: David R. Martin, Mayor  
Kathryn Emmett, Corporation Counsel

From: Cynthia Anger, Asst. Corporation Counsel *Cynthia Anger*

Re: Request for Opinion - Sale of the 670 Pacific Street, South End Fire Station #2

You have asked for an opinion regarding the South End Firehouse sale to Pacific Street Firehouse, LLC and the release of the police substation lease condition provided for in Paragraph 30 of the Purchase and Sales Agreement (“Agreement”) with Pacific Street Firehouse, LLC.

On July 25, 2017, the City of Stamford entered into an agreement pursuant to the Board of Representatives Resolution No. 3847 “Approving the Purchase and Sales Agreement Between the City of Stamford and Pacific Street Firehouse, LLC, for the Sale of the South End Fire Station #2, 670 Pacific Street.”

Paragraph 30 of the Agreement provides that Pacific Street Firehouse, LLC “shall construct and maintain a police substation on the first or second floor” within the building at 670 Pacific Street and lease the space to the City. While it contains some terms and conditions for the police substation, paragraph 30 is merely an agreement to agree, which anticipates that the parties will negotiate a formal lease. Any such lease would require the approval of the Board of Representatives. Charter Sec. C2-10-2(10) (Board of Representatives has the power to approve the purchase, sale or lease of real property.) “The general rule is that an agreement to agree is too indefinite to be legally binding when it requires a superseding contract the terms of which must be negotiated.” *Kulick v. City of Hartford*, 2007 WL 4707809, at \*2 (Conn. Super. 2007).

At some point between 2017 and 2019, the City determined that it did not need or want the police substation and accordingly did not negotiate a lease for the substation. In 2019, the Director of Administration confirmed that the substation was no longer desired

and, therefore, not required, and just prior to closing in October 2020, the Director of Public Safety Health and Welfare and the Police Chief confirmed that the police substation was not wanted and released the condition. Thereafter, the City and Pacific Street Firehouse, LLC signed the “First Amendment to Purchase and Sales Agreement” (“the First Amendment”).

The Director of Public Safety, Health and Welfare and Chief of Police are responsible for the City’s police functions and administration. See Charter Sec. C5-40-1, (the Director of Public Safety, Health and Welfare shall be the head of the Office of Public Safety, Health and Welfare and shall be responsible for the administration, supervision and performance of all municipal functions related to police, including supervision of the activities of the Chief of Police). See also Charter Secs. C5-40-2(a)(1) and (2) (powers and duties of the Chief of Police include (1) the administration, supervision and discipline of the Police Department and (2) the proper care and custody of the property, apparatus and equipment used by the Department.) The First Amendment reflects the determination by those responsible under the City Charter for the City’s police functions and administration that the substation was not needed and would not be of any use to the Department.

Charter Sec. C5-10-4 provides that the Director of Public Safety, Health and Welfare is required to organize the functions of the Police Department “in the manner best calculated to efficiently and effectively provide the municipal services for which the Department is responsible.” In the performance of his duties, the Director determined that the police substation was not needed. The Mayor is responsible for “the proper performance” of “all the appointive officers and departments and employees.” Charter Sec. C3-10-7. Based on the Director’s assessment that the City did not need the substation, the Mayor appropriately exercised his authority to enter into the First Amendment to effectuate the efficient and effective provision of police services pursuant to Charter Sec. C3-10-1 which vests the executive and administrative powers of the City in the Mayor.

Please let me know if you have additional questions.