

Memorandum



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Matt Loesch
Jim Shannon

SUBJECT: ACTIONS RELATED TO THE FIRST CHURCH OF CHRIST SCIENTIST PROJECT LOCATED AT 39 EAST ST. JAMES STREET

DATE: June 8, 2023

Approved

Date

6/9/2023

COUNCIL DISTRICT: 3

RECOMMENDATION

- (a) Approve the expenditure of City funds of \$200,000 to remove the containment wrap and tarp and weatherproof, board up, and implement a fire monitoring system to protect the First Church of Christ Scientist located at 39 East St. James Street and lien the property to recoup all related costs upon sale of the property.
- (b) Adopt the following 2022-2023 Appropriation Ordinance adjustments in the General Fund:
 - (1) Decrease the Personal Services appropriation to the Planning, Building, and Code Enforcement Department by \$200,000; and
 - (2) Increase the Non-Personal/Equipment appropriation to the Public Works Department by \$200,000.

SUMMARY AND OUTCOME

To protect the First Church of Christ Scientist (Church) structure, Z&L Properties (Z&L) installed a protective containment wrap on the Church, after work initially commenced on the Church. The containment wrap is supplemented by a tarp covering the Church. The protective elements are in significant disrepair, do not protect the Church, and currently constitute blight. The condition of the tarp is an eyesore for the adjacent neighborhood and St. James Park. The President of Z&L is under house arrest in London, and Z&L has not maintained the property as specified in the Disposition and Development Agreement. This memorandum summarizes City actions taken to date and describes paths to provide the needed protection for the landmark.

Staff's recommended approach at this time is for Z&L to cooperate with the City by voluntarily allowing the City to remove the tarp and scaffolding, board up the building, and replace the containment wrap, then executing a promissory note and deed of trust on the property, so that the City may recoup its costs upon the sale of the property (Alternative 1 as described below). This memorandum includes action to reallocate General Fund vacancy savings from the Planning, Building, and Code Enforcement Department to the Public Works Department for this work. Another path, which is already underway, is the City's Administrative Remedy process that imposes administrative costs and penalties on the property owner for non-compliance with the San José Municipal Code and could potentially result in further enforcement action.

BACKGROUND

In December 2003, in a joint meeting of the Redevelopment Agency and City Council, a Disposition and Development Agreement was initiated with Green Valley Corporation for the development of housing at 252 North First Street and the restoration of the historic Church, a City Landmark, located at 39 E. St. James Street. By 2017, Green Valley Corporation had not moved forward on building housing on the site, nor did Green Valley Corporation initiate restoration work on the Church. In April of 2017, Green Valley sold its interest in the property, including the Church, to Z&L.

Z&L has not commenced housing construction or Church restoration. Since 2020, the Office of Economic Development and Cultural Affairs (OEDCA) staff encouraged Z&L representatives to sell the property. OEDCA staff worked with multiple developers and Z&L staff to explore a possible sale. In December 2022, the chairman of Z&L was arrested in London. No further movement towards a sale of the property has taken place since that time.

In October 2021, the Department of Planning Building and Code Enforcement (PBCE) Code Enforcement Division conducted a proactive inspection of the property as part of the Neglected Vacant Building and Storefronts Program. A code enforcement case was opened and staff invoiced the property owner for quarterly monitoring under the Vacant Building and Storefronts Program Downtown Mandatory Registration ordinance and performed monitoring inspections between October 2021 and January 2023. An inspection, conducted in January 2023, found the tarp covering the building to be in significant disrepair, likely from recent storms, as well as other blight violations on the property. Staff attempted to contact the property owner to advise of the condition of the property and violations requiring corrective action but was unsuccessful. In February 2023, per *San José Municipal Code Chapter 1.14.030 Compliance Order*, Code Enforcement began the Administrative Remedy process and issued a Compliance Order to the property owner to correct the identified violations including replacing the tarp covering. Staff conducted a compliance inspection in March 2023 and found that no action had been taken toward compliance. On April 27, 2023, as the next step in the Administrative Remedy process, staff brought the case for a hearing before the Appeals Hearing Board (Board) for noncompliance. The Board found the property to be in violation and issued an Administrative

Order by Resolution requiring the property owner to bring the property into compliance by June 12, 2023, or incur a one-time penalty and/or per day fines for noncompliance.

Z&L is not fulfilling its obligation to maintain and protect the Church. Z&L representatives stated that the company's resources are in limbo, and the company is not repairing the containment wrap or tarp on the Church. As a result, the Church is not protected against wind and rain. The containment wrap and additional tarps are in tatters and an unsightly blight in the neighborhood. It is clear from Z&L's failure to act that the City must move forward with replacing the tarp, or identify an alternate method of protection, or risk significant damage to the building. Staff from OEDCA, PBCE, the City Attorney's Office, and the Public Works Department (PW) have identified two possible paths forward. It is critical that the Church be secured and protected, as the Church is a City landmark. San José has suffered through buildings that were lost and impacted due to "demolition by neglect." If exposure to weather and wind cause the building to deteriorate, the structure may eventually be beyond repair. In its current blighted state, the Church is an attractive nuisance creating the potential for trespassing or other activities that could pose a risk to the property and/or public. The chronic blighted condition of the Church is also negatively impacting the properties around the Church, diminishing property values, and the potential for resale of nearby properties.

ANALYSIS

Current Condition of the Church

To ascertain the current condition of the Church, City staff coordinated with Z&L representatives to meet on-site and allow PW's staff and the City's contractor, Tucker Construction, to perform a visual survey of the interior of the Church. The interior of the Church was in better condition than anticipated. The interior was dry and evidenced no easily detectable mold.

Alternative 1: City Obtains Authority to Proactively Weatherproof, Board Up the Church Building, and Implement a Fire Monitoring System

City staff and consultants toured the Church site and determined there is a viable option to weatherproof the building, board it up, and implement a fire monitoring system as an alternative to replacing the existing tarp. This would include removing the current containment wrap, tarp, and scaffolding. To accomplish this, Z&L leadership would need to approve and sign the right of entry, deed of trust, and promissory note. Z&L representatives believe there is an opportunity to successfully pursue this alternative because Z&L leadership understands the obligation to protect the Church, although they have currently failed to do so. Importantly, Z&L leadership reportedly understands that, if the Church cannot be protected through such an agreement, then the City will continue with the Code Enforcement Administrative Remedy as discussed below. Proceeding with Code Enforcement Administrative Remedy will cost Z&L further fines and attorney's fees.

Alternative 2: Continue the Code Enforcement Administrative Remedy Process per the San José Municipal Code

Per *San José Municipal Code Chapter 1.14 Administrative Remedies*, when noncompliance with a Compliance Order has occurred, the City must set a hearing before the Board and provide the violator a written notice of hearing. At the hearing, staff will present the case to the Board, including a summary of the violations and evidence, a recommendation to recover administrative costs to date, a one-time penalty for noncompliance, and a proposed order to correct. The order to correct sets forth the required steps and timeline for compliance, and potential fines and penalties per day for noncompliance up to a total maximum administrative penalty of \$100,000. The Board can either uphold staff's recommendation in full, modify, or dismiss it, except for staff's administrative costs.

Accordingly, Code Enforcement presented the Z&L property case for hearing before the Board on April 27, 2023. Staff's recommendation included a one-time administrative cost of \$1,981 and a one-time penalty of \$5,000 to be paid by June 12, 2023. Staff's recommendation also included proposed order to correct to be completed by June 12, 2023 or a \$1,000 per day penalty for noncompliance would be assessed up to a total maximum of \$100,000. The Board upheld staff's recommendation with two minor modifications: 1) to put the one-time penalty of \$5,000 in abeyance until June 30, 2023 and 2) allow an interim security alarm system to be put in place until a permanent security alarm system can be installed by June 30, 2023. The corrective actions required by the Board's administrative order to be completed by June 12, 2023 are summarized as follows:

- 1) Ensure the building has the required operating security alarm system, is maintained in accordance with the California Fire Code, and has exterior lighting continuously lit from dusk to dawn (note: an interim security measure may be installed/implemented pending installation of a security system per City's approval);
- 2) Replace the tarp coverings over the building and ensure proper weather protection is provided;
- 3) Remove the unpermitted vending facilities and activities from the property; and
- 4) Obtain an active building permit to modify or rehabilitate/repair the building; or ensure the building is ready for occupancy, is actively maintained and monitored, does not otherwise constitute a public nuisance, and is actively offered for sale, lease, or rent.

Once the June 12, 2023, compliance date passes, a compliance inspection will be conducted. If it is determined compliance has not been met, staff will begin billing the \$1,000 per day administrative penalty monthly and will conduct monthly monitoring inspections until compliance is reached. The property owner may also contact PBCE, at any time, to request a compliance inspection. After June 30, 2023, if compliance is still not achieved, staff will also invoice the owner for the \$5,000 one-time penalty.

Once billing reaches \$100,000, and if the property is still out of compliance, the case is reviewed for a transfer to the City Attorney's Office for further enforcement, such as a public nuisance lawsuit seeking an injunction and appointing a receiver. In some limited instances, the case can also be transferred/referred to the City Attorney's Office if there is an imminent hazard or threat that is without remedy.

Administrative costs and penalties assessed against the property owner will first go through the finance process for collection; however, a lien will be placed against the property if unpaid. Like Alternative 1, should at any time the condition of the property poses an imminent hazard to the public, Code Enforcement staff can take action to summarily abate the condition/hazard. However, any costs incurred to abate the condition/hazard would be paid to the City abatement contractor upfront and then invoiced to the property owner to recoup the costs, also resulting in a lien placed on the property if unpaid.

Potential Loss of City Repair Funds

In order to quickly weatherproof, board, and protect the Church, the City may proceed with the work and incur the related costs under Alternative 1. Under Alternative 2, the City would continue with the Code Enforcement Administrative Remedy Process, but that action may not compel Z&L to expend additional dollars to complete the corrective actions to address the blight and protect the Church.

Repayment of any costs incurred to the City under Alternatives 1 or 2 is not certain. Either Alternative will likely rely on documents being recorded on the title to cause Z&L to repay the City out of a subsequent sale of the property. The Park View Project, including the Church, has been used as collateral by Z&L for the San Francisco project that is subject to criminal investigation for which Z&L's chairman was placed under arrest. This means that the San José property on North Second Street and St James Street can be subject to foreclosure by Z&L's creditors related to the foreclosure of Z&L's San Francisco property.

Staff Recommendation – Alternative 1: Proactively Weatherproof, Board Up the Church Building, and Implement a Fire Monitoring System.

Remove existing tarps, rope, and wraps	\$29,000
Inspect the scaffold and make corrections as needed	\$9,000
Install weatherproofing and boarding	\$160,000
Cost to remove and dispose of containment and scaffold	\$2,000
Total	\$200,000

**Tucker Construction noted that the containment wrap may need to be replaced in two to three years.*

EVALUATION AND FOLLOW-UP

Staff will pursue the Alternatives outlined above. As additional information is provided, staff will focus on the quickest, most effective, and most efficient way that minimizes City investment to protect and secure the Church and mitigate impact to the property and public. Staff will provide an informational memorandum by September of 2023 to advise City Council and the public on the progress made on each Alternative.

COST SUMMARY/IMPLICATIONS

As described above, the estimated cost of staff's recommended Alternative 1 to weatherproof, board up, and protect the Church is \$200,000. The appropriation adjustment actions are recommended in this memorandum to reallocate General Fund vacancy savings from PBCE's Personal Services appropriation to PW's Non-Personal/Equipment appropriation. As the containment wrap may need to be replaced in two to three years, the continued funding of this effort will be addressed as part of a future budget process, as necessary. Staff will report on costs to protect and secure the Church by weather proofing and boarding it up in the September 2023 informational memorandum.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the recommended action.

Fund #	Appn #	Appn. Name	Total Appn	Rec. Budget Action	2022-2023 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	0581	Personal Services (PBCE)	\$9,761,425	(\$200,00)	731	2/14/2023, Ord. No. 30883
001	0572	Non-Personal/ Equipment (Public Works)	\$18,551,917	\$200,000	789	2/14/2023, Ord. No. 30883

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Planning, Building, and Code Enforcement Department.

HONORABLE MAYOR AND CITY COUNCIL

June 8, 2023

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 20, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

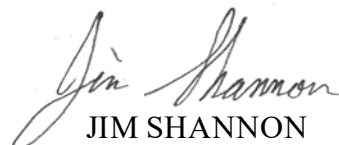
Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
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/s/
MATT LOESCH
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JIM SHANNON
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For questions, please contact Nanci Klein, Director of Economic Development and Cultural Affairs (408) 535-8184.