

## NOTICE AND CALL OF A SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF PARLIER

### THE CITY COUNCIL OF THE CITY OF PARLIER

**NOTICE IS HEREBY GIVEN**, pursuant to Parlier Municipal Code Section 2.04.110 and the incorporated "Roberts Rules of Order" and Government Code §54956, that a special meeting of the City Council of the City of Parlier is hereby called to be held on June 9, 2023, commencing at 5:00 P.M. in the City Council Chambers at 1100 E. Parlier Avenue, Parlier, CA 93648 for the purpose of discussing the following matter:

#### **REGULAR BUSINESS:**

1. **SUBJECT:** Consideration and Necessary Action on Resolution Approving and Authorizing Execution of Second Amendment to Disposition and Development Agreement between the City and Greenbrier Holdings LLC.

**RECOMMENDATION:** Staff recommends that council adopt **Resolution No. 2023-22** Approving and Authorizing Execution of Second Amendment to Disposition and Development Agreement between the City and Greenbrier Holdings LLC.

2. **SUBJECT:** Consideration and Necessary Action on Resolution of City Council Granting Permission for Absences of Council Member from Regular City Council Meetings.

**RECOMMENDATION:** Staff recommends that the council adopt **Resolution No. 2023-23** Granting Permission for Absences of Council Member from Regular City Council Meetings.

#### **CLOSED SESSION:**

3. **"Public Employment Pursuant to Government Code Section 54956.7"**  
Positions: All Newly Hired Peace Officers.

No other business shall be discussed or conducted at the Special Meeting. The public will be provided with an opportunity to comment on the item on the special agenda. This call of a special meeting is by majority of the City Council as follows:

Dated: June 8, 2023

By:   
Sabrina Rodriguez, Mayor Pro tem

Dated: June 8, 2023, 2023

By: 

Juanita Molina, Council Member

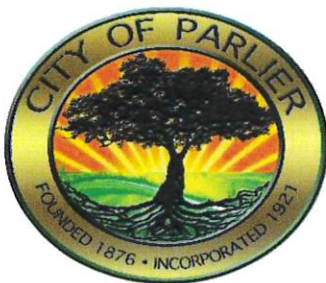
Dated: June 8<sup>th</sup>, 2023

By: [Signature]

Signature

By: Catherine Solorio, Council Member

Print Name and Title



## CITY COUNCIL OF PARLIER SPECIAL MEETING

This meeting of the City of Parlier City Council is live streamed and may be accessed at  
<https://www.youtube.com/channel/UCJs3ylcM9NWQGLdwpBCmoAQ>

**DATE:** FRIDAY, JUNE 9, 2023  
**TIME:** 5:00 PM  
**PLACE:** Parlier City Hall  
1100 E. Parlier Avenue  
Parlier, CA 93648

### **CALL TO ORDER/WELCOME:**

**Roll Call:** Mayor Alma M. Beltran, Mayor Pro tem Sabrina Rodriguez, Council member Juanita "Janie" Molina, Council member Diego Garza, Council member Cathryn "Kathy" Solorio, City Clerk Dorothy Garza and Treasurer Michelle Lopez.

**FLAG SALUTE:** Mayor Alma M. Beltran

### **INVOCATION:**

### **ADDITIONS/DELETIONS:**

### **REGULAR BUSINESS:**

1. **SUBJECT:** Consideration and Necessary Action on Resolution Approving and Authorizing Execution of Second Amendment to Disposition and Development Agreement between the City and Greenbrier Holdings LLC.

**RECOMMENDATION:** Staff recommends that council adopt **Resolution No. 2023-22** Approving and Authorizing Execution of Second Amendment to Disposition and Development Agreement between the City and Greenbrier Holdings LLC.

2. **SUBJECT:** Consideration and Necessary Action on Resolution of City Council Granting Permission for Absences of Council Member from Regular City Council Meetings.

**RECOMMENDATION:** Staff recommends that the council adopt **Resolution No. 2023-23** Granting Permission for Absences of Council Member from Regular City Council

Meetings.

**PUBLIC COMMENT ON CLOSED SESSION**

THIS PORTION OF THE MEETING IS RESERVED FOR PERSONS DESIRING TO ADDRESS THE COUNCIL ON AN ITEM WHICH IS TO BE CONSIDERED DURING CLOSED SESSION. SPEAKERS SHALL LIMIT THEIR COMMENTS TO THREE (3) MINUTES.

**CLOSED SESSION:**

**3. "Public Employment Pursuant to Government Code Section 54956.7"**

Positions: All Newly Hired Peace Officers.

**ADJOURNMENT**

**ADA NOTICE**

In compliance with the American with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 646-3545 ext. 227. Notification 48 hours prior to the meeting will enable the city to make arrangements to ensure accessibility to this meeting.

**DOCUMENTS**

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the front counter at City Hall located at 1100 East Parlier Avenue, Parlier, CA during normal business hours. In addition, most documents are posted on the

AGENDA ITEM: 1

MEETING DATE: June 9, 2023

DEPARTMENT: Administration

## **REPORT TO THE CITY COUNCIL**

### **SUBJECT:**

Consideration and Necessary Action on Resolution Approving and Authorizing Execution of Second Amendment to Disposition and Development Agreement.

### **RECOMMENDATION:**

Adopt Resolution Approving and Authorizing Execution of a Second Amendment to Disposition and Development Agreement.

### **DISCUSSION:**

On May 4, 2023, by a 3-2 vote, the City Council approved a proposal by Greenbrier Holdings LLC, a party to the Disposition and Development Agreement dated December 17, 2017 for a Second Amendment to the Disposition and Development Agreement. The Disposition and Development Agreement provides explicitly that no change to the Disposition and Development Agreement is effective unless in writing and signed by the parties to the Disposition and Development Agreement.

Staff prepared a Second Amendment to the Disposition and Development Agreement that in staff's view accurately reflected the terms of the proposal approved by the City Council on May 4, 2023.

On transmitting the Second Amendment to Greenbrier's representatives, for their review, consideration and execution, staff was apprised that in Greenbrier's view, the Second Amendment to Disposition and Development Agreement prepared by staff does not reflect the action taken by the Council on May 4, 2023.

Council directed the city attorney to meet with Greenbrier's representatives to attempt to come to an agreement on the form of the Second Amendment at the meeting on June 1. A meeting occurred on June 5 and the attached Second Amendment is what the city attorney and Greenbrier have agreed to present to council for their consideration. The representatives were not able to reach an agreement relative to including in the Second Amendment a requirement that as a condition to cultivation of cannabis for 2023 Greenbrier pay for construction of a 20,000 square foot building to be used as a youth sports complex, so the Second Amendment does not include that provision. Council can

either approve the Second Amendment in the form provided; or, it can direct the inclusion of that provision, or a variant of it, and adopt the resolution approving the agreement as amended by inclusion of that provision.

**RECOMMENDATION:**

- Adopt Resolution Approving and Authorizing Execution of a Second Amendment to Disposition and Development Agreement.

**FISCAL IMPACT:**

None.

Prepared by:

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Neal E. Costanzo, City Attorney

**RESOLUTION NO. 2023-\_\_**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PARLIER APPROVING AND AUTHORIZING EXECUTION OF SECOND  
AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT  
BETWEEN CITY OF PARLIER AND GREENBRIER HOLDINGS LLC**

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WHEREAS, the City of Parlier is a party to the Disposition and Development Agreement with Greenbrier Holdings LLC and G Properties LLC effective December 27, 2017; and

WHEREAS, the Disposition and Development Agreement requires that Greenbrier LLC, the Developer, and every affiliate entity as defined in the Disposition and Development Agreement to pay specified fees; and

WHEREAS, the Disposition and Development Agreement provides that every five years from and after the date on which a regulatory permit is issued the parties will renegotiate whether the 2% of gross receipts revenue raising fee should be adjusted; and

WHEREAS, the parties have negotiated a change to the 2% of gross receipts revenue raising fee and certain associated provisions of the Disposition and Development Agreement and desire to amend the Disposition and Development Agreement to reflect that change.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The foregoing recitals are true and correct.
2. The City Council has reviewed and approves the Second Amendment to Disposition and Development Agreement attached and incorporated by reference as Exhibit A.
3. The Mayor is authorized to execute the Second Amendment to Disposition and Development Agreement that is attached and incorporated by reference as Exhibit A.

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The foregoing Resolution was duly approved this \_\_\_\_ day of \_\_\_\_\_ 2023, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Alma Beltran, Mayor, City of Parlier

ATTEST:

\_\_\_\_\_  
Dorothy Garza, City Clerk  
City of Parlier



## **SECOND AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT**

This Second Amendment to the Disposition and Development Agreement (Second Amendment) is entered into as of May \_\_\_\_, 2023, between the City of Parlier, a California municipal corporation and a general law city (City) and G Properties LLC, a California limited liability company (Landowner), and Greenbrier Holdings LLC, a California limited liability company (Developer) based on the following recitals which are a substantive part of this Second Amendment.

### **RECITALS**

A. City entered into the Disposition and Development Agreement with the predecessor of Landowner and Developer effective December 27, 2017, regardless of the date of actual execution and by the First Amendment to the Disposition and Development Agreement dated August 15, 2019, agreed to substitute and assign the aforementioned Disposition and Development Agreement to Landowner and Developer.

B. By its terms, the Disposition and Development Agreement requires the Developer and any Affiliate Entity, as defined in Section 12, subsection (C) of the Disposition and Development Agreement to pay specified fees and taxes as set forth in the Agreement.

C. The Disposition and Development Agreement provides that every five years from and after the date on which a regulatory permit is first issued through the end of the term of the Disposition and Development Agreement, the parties will renegotiate whether a two percent of Gross Receipts Revenue Raising Fee should be adjusted and will negotiate those changes in good faith.

D. The parties have negotiated a change to the two percent of Gross Receipts Revenue Raising Fee and associated provisions of the Disposition and Development Agreement and desire to amend the Disposition and Development Agreement dated December 27, 2017, to reflect that change.

### **AGREEMENT**

NOW, THEREFORE, City, Landowner and Developer agree as follows:

1. Section 9, subdivision B of the Disposition and Development Agreement is amended to read as follows:

“B. An annual revenue raising fee for the privilege of having the right to conduct commercial cannabis operations in the City (“Revenue Raising Fee”). The Revenue Raising Fee shall be:

2. Five percent (5%) of Gross Revenues generated from any retail sale of any cannabis or cannabis product.; two percent (2%) of Gross Receipts of any non-retail sale of any cannabis or cannabis product cultivated, processed, or manufactured in or distributed

from, and, four percent (4%) of Gross Receipts of any non-retail sale of any cannabis flower from plants cultivated on said real property.

(a) The term "Gross Receipts" for purposes of computing a Revenue Raising Fee shall exclude any sale or transaction between Developer and any Affiliate Entity (as defined in Section 12, subsection (C)), but shall include any and all revenues generated from the Developer's or Affiliate Entity's sale of cannabis or cannabis products to another state or local licensed permitted cannabis business, or any other person or entity.

(b) The parties agree that within five years after the date of this Second Amendment, and for each five-year interval between the date of this Second Amendment and the conclusion of the term of the Disposition and Development Agreement, the parties will renegotiate whether the percentage of Gross Receipts Revenue Raising Fee should be adjusted, and they will exert their best efforts to negotiate this term in good faith.

(c) The applicable percent of Gross Receipts Revenue Raising Fee shall be applied against all receipts for all cannabis or cannabis products sold by Developer or an Affiliate Entity, Developer shall provide, within a reasonable time following a request any and all receipts for any and all sales of cannabis or cannabis products.

(d) Developer agrees to pay, and City agrees to accept the Revenue Raising Fee as determined in subsection (B)(2) of this Section 9 above, but in no event shall Developer pay to City less than Five Hundred Thousand Dollars (\$500,000) annually during the term of this Agreement.

2. The remaining provisions of subsection B of Section 9 and of Section 9 of the Disposition and Development Agreement not changed by this Second Amendment commencing with subdivision C shall remain in full force and effect. Elimination of Section 9 B(1) is intentional and the parties agree to eliminate that provision of the revenue raising fee.

3. Notwithstanding any provision of the Disposition and Development Agreement or of any regulatory permit, Developer shall not be required to adhere to any security requirement imposed by the City that is not imposed on other business subject to the City's jurisdiction so long as Developer complies with the requirements imposed

by state statute, regulation or law relation to security requirements for facilities housing or selling Cannabis in the State of California.

4. Developer owns two parcels on which it has, with the City's approval, cultivated cannabis outdoors, one of which is east of the main facility occupied by Greenbrier, within the developed portion of the City Industrial Park (the Industrial Park Property) and another, larger parcel which is south and west of the Greenbrier main facility (the Academy Property). Developer will cease cultivation on the Industrial Park Property, but will continue cultivation outdoors on the Academy Property. The parties agree that Developer has the necessary security in place for an outdoor grow on the Academy Property and that maintenance of what is in place for that purpose is the only security measure required for that property. Developer agrees to keep the City informed as to when planting and harvest occur, and the parties agree to work cooperatively together to lessen and mitigate any adverse impacts to the City and its inhabitants, including mitigation of odor, as made reasonably necessary by the outdoor cultivation activities of Developer. Developer's regulatory permit shall apply to all cultivation activities (Resolution 2021-39). Developer and City agree that in connection with the renegotiation or adjustment of the Gross Receipts Revenue Raising fee the parties shall also negotiate whether these conditions shall be modified to include the Industrial Park property. The parties agree to renegotiate the Second Amendment in the event federal legislation is enacted that affects Developers activities, which may include the Industrial Park property or other property.

WHEREFORE, the parties have executed this Second Amendment as of the date set forth above

GREENBRIER HOLDING, LLC

Dated: January \_\_, 2023

By \_\_\_\_\_

Marc Garcia, Chief  
Executive Officer

G PROPERTIES, LLC

Dated: January \_\_, 2023

By \_\_\_\_\_

Fred Fagundes, Manager

CITY OF PARLIER, a California  
General Law City

Dated: January \_\_\_\_, 2023

By \_\_\_\_\_

Alma M. Beltran, Mayor

ATTEST

By \_\_\_\_\_

Bertha Augustine,  
Deputy City Clerk

Date: \_\_\_\_\_

AGENDA ITEM: 2

MEETING DATE: June 9, 2023

DEPARTMENT: Administration

## **REPORT TO THE CITY COUNCIL**

### **SUBJECT:**

Consideration and Necessary Action on Resolution of the City Council of the City of Parlier granting permission for absences by Council member from regular City Council meetings.

### **RECOMMENDATION:**

Adopt resolution granting permission for absence by Council member from regular Council meetings.

### **DISCUSSION:**

On April 20, 2023, the Council adopted a Resolution allowing Council member Diego Garza to appear by telephone conference at City Council meetings during the period of time he attends training for employment as a Correctional Officer which began on May 8, 2023, and will continue until approximately mid-August, a period of 13 weeks. The Council member is attending training at a facility outside of the City of Parlier in Galt, California, and trainees are subject to a curfew which requires the Councilman to cease participation by teleconference or otherwise in City Council meetings, after approximately 9:00 p.m. Since the Councilman began appearing by teleconference meetings, City Council meetings have been conducted beyond 9:00 p.m.

The requirement that a Council member attend, unless he is absent with permission, all regular City Council meetings and that failing to do so for a period of 60 days consecutively will result in his or her office becoming vacant is set by Government Code §36513. There is a similar requirement in Parlier Municipal Code §2.04.100, one of the 1921 ordinances that were adopted by the voters when the City was formed and which cannot be repealed other than by the voters which provided that a Council member forfeits his or her office by failing to attend four consecutive meetings, unless the Council member was "sick" or "absent from the City". Because Government Code §36513 is a state legislature enactment governing the same topic as the Municipal Code provision the statute, Government Code §36513 supersedes and preempts the Parlier Municipal Code provision relating to the number of consecutive meetings that may be missed before one's office is declared vacant.

The statute which provides that one's office becomes vacant upon a Council member missing regularly scheduled meetings for a period of 60 days consecutively specifies that this is the result only if the absence occurs "without permission". Since the City is governed by a City Council, the permission to be absent can only be given by a majority of the City Council.

Because of his circumstances, Council member Garza is typically unable to attend the full meetings that are regularly scheduled for the City Council of Parlier. There is no statute or other law that addresses whether the partial attendance at a City Council meeting counts as attendance or qualifies as an absence. That is inconsequential, however, because the City Council does have the discretion to grant permission to be absent from any and all regular Council meetings. The proposed resolution that accompanies this report is being provided to determine whether a majority of the Council, without Council member Garza participating, is willing to grant that permission for the time period during which Council member Garza is expected to participate telephonically because of his attendance at training for the Correctional Officer position.

**RECOMMENDATION:**

Adopt resolution granting permission for absence by Council member from regular Council meetings.

**FISCAL IMPACT:**

None.

Prepared by:

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Neal E. Costanzo, City Attorney

**RESOLUTION NO. 2023-\_\_\_\_**

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PARLIER GRANTING PERMISSION FOR ABSENCES BY COUNCIL  
MEMBER FROM REGULAR CITY COUNCIL MEETINGS**

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WHEREAS, Parlier Municipal Code §2.04.100 provides:

“Any member of the City Council who refuses to attend four consecutive meetings, when neither sick nor absent from the City at the time meetings were held, shall be deemed to have forfeited his title to the office of councilman, and the remaining members or a majority thereof may cause an action to be brought in the Superior Court to have his office declared vacant”.

WHEREAS, PMC §2.04.100 is an ordinance adopted by the voters in 1921 which is binding on the City Council unless and until repealed by the voters, but, like any City ordinance can be, and has been superseded by subsequent state law governing the same topic; Government Code §36513 reads as follows:

“If a City Council member is absent without permission from all regular City Council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy”.

WHEREAS, on April 20, 2023, this Council adopted a resolution allowing Council member Diego Garza to appear by telephone conference at City Council meetings during the period of time he attends training for employment as a correctional officer which he began on May 8, 2023, and will continue until approximately mid-August, a period of 13 weeks; and

WHEREAS, Council member Garza is attending training at a facility outside the City of Parlier in Galt, California and trainees are subject to a curfew which requires Garza to cease participation by teleconference or otherwise, at approximately 9:00 p.m. and, since he began appearing by teleconference, meetings of the City Council have been conducted beyond 9:00 p.m.; and

WHEREAS, there is no statute, case law or other law that addresses whether an appearance at part of a regular meeting qualifies as attendance or an absence; but, the law clearly provides by Government Code §36513, quoted above, that absences with permission from a regularly scheduled City Council meeting do not result in the Council member who is excused by permission vacating his office on failure to attend City

Council meetings for 60 days consecutively; and

WHEREAS, the City Council wishes to eliminate any ambiguity concerning the effect of Council member Garza's attendance at regular meetings by teleconference by granting permission for any and all absences occurring by reason of Council member Garza being required to attend training for employment as a correctional officer.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The foregoing recitals are true and correct.
2. The City Council grants permission to Council member Diego Garza to be absent from any and all regular City Council meetings occurring at any time during the period from May 8, 2023, to and including August 18, 2023.
3. During the period from May 8, 2023, to and including August 18, 2023, Council member Garza shall continue to attend City Council meetings, regular and/or special, by teleconference pursuant to the authorization granted by this Council on April 20, 2023.

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The foregoing Resolution was duly approved this 9<sup>th</sup> day of June 2023, by the following vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
Alma Beltran, Mayor, City of Parlier

ATTEST:

\_\_\_\_\_  
Bertha Augustine, Deputy City Clerk,  
City of Parlier