

April 30, 2020

Drew Corbett
City Manager
City of San Mateo
330 West 20th Avenue
San Mateo, California 94403

Dear Drew:

When I was hired by the city in 2003, the city council approved an Equity Sharing Agreement by which the city assisted with the purchase of a home for myself and my family. Under this agreement (a copy of which is attached), I agreed to fund 47.4% of the cost of the home and the city agreed to fund the balance. My family and I moved in to the home and have lived there for the last 17 years.

My wife and I have decided to move and have taken steps to facilitate the sale of the home. We have retained a licensed real estate broker, listed the home on the Multiple Listing Service, and moved to an apartment in San Mateo. Now that we have decided to sell our home we need to take certain steps and obtain approval of the process for selling the home and dividing the equity between ourselves and the city.

Terms of Agreement

The agreement provides for a number of ways by which it can be terminated. One of these is "the failure by [me] to occupy said property as [my] principal place of residence for a period of ninety (90) consecutive days." My wife and I moved to our apartment on April 8. By this term the agreement shall be terminated on July 7.

The agreement provides that if I "fail to occupy said residence for a period of ninety (90) consecutive days, then [I] shall have one hundred and twenty (120) days from the date of termination within which to exercise an option to purchase the Property."

The agreement goes on to state that if I waive my right to purchase the property, "then the City shall have thirty (30) days from the receipt of notice of said waiver, or from the expiration of said ninety (90) days, whichever shall first occur, in which to purchase the Property."

The agreement also contains provisions governing the process for selling the property if neither I nor the city is interested in purchasing it. If the city decides to purchase it would buy my interest in the property. If the city decides not to purchase the property, the city must then select the method for selling the property. Under the agreement the property shall either be listed with one or more duly licensed real estate brokers as the parties may then select and placed on the multiple listing service; or, the property shall be advertised for sale in accordance with such procedures as the City then determines.

If the parties choose to sell the property, the property will be listed for not less than its fair market value upon which the parties shall seek to agree. If the parties are unable to agree on fair market value, the agreement requires appraisal of the property.

Requested Actions

My wife and I will not be purchasing the city's interest in the property. This letter shall serve as my notice that we will waive the purchase option. Accordingly, the City now has 30 days to decide whether it desires to purchase my interest in property. I would request that you seek and provide your recommendation to the city council on this decision.

If you recommend and the city council agrees to waive its option to purchase my home, the city will have to decide how to sell the property and determine its fair market value. I would request that the council:

- [1] Approve the sale of the home by realtor and approve the retention of our realtor, Sam Hesslegren of KW Peninsula Estates¹, for this purpose;
- [2] agree upon \$1.8 million as the fair market value for the property.

The city's interest in the property is an asset that is accounted for in the city's financial records. For the last several years, the city has been obtaining an annual appraisal of the property for reporting purposes. The most recent appraisal from June 2019 established the fair market value at \$1.78 million. I would suggest that \$1.8 million be established as fair market value. While we are hopeful the property will sell more for more than this, establishing this amount will hopefully avoid having to seek reevaluation and council approval of a different amount should market conditions change.

The agreement describes the relative initial capital contributions made by the city attorney and the city. The equity share of each party is calculated based upon the initial capital contribution made by the parties toward the purchase price of the home (\$855,000). The agreement provides that the parties acknowledge that the property was being purchased with some deficiencies and that the city attorney would pay \$10,000 toward correcting the deficiency. This \$10,000 was then added to the purchase price to calculate each party's equity share. My equity share was calculated by adding my down payment (\$50,000) to our mortgage (\$350,000) plus the \$10,000 to fix the deficiency and dividing the sum by the purchase price plus the \$10,000 ($\$855,000 + \$10,000 = \$865,000$.) Thus, my share was 410,000 divided by 865,000 which equals 47.4%. The city's share was 52.6%.

The deficiency in the home was based upon an inspection performed at the time the home was purchased of a fireplace chimney that needed repair. We chose not to use the fireplace over the last 17 years, and it was not repaired. (The chimney was recently inspected in preparation for sale and the inspector noted that repairs could be accomplished for less than \$900.) As a result, I would also request that the council approve recalculation of the equity share to remove the \$10,000 capital contribution that was not made. In doing so, my equity share will be adjusted to the sum of my down payment and mortgage divided by the purchase price ($50,000 + 350,000 / 855,000 = 46.78\%$.) This will result in an increase in the City's equity share from 52.6% to 53.22% and a corresponding decrease in the my share from 47.4% to 46.78%.

¹ Typical realtor commissions range between 5%-6% of the sales price. Mr. Hesselgren has agreed to a 5% commission.

Thank you for your assistance with this matter. Please let me know if you have any questions.



Shawn M. Mason

PLEASE NOTE THAT THIS LETTER IS BEING PRESENTED IN MY PERSONAL CAPACITY AND NOT IN MY CAPACITY AS CITY ATTORNEY. THIS LETTER REPRESENTS MY UNDERSTANDING OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES FROM MY PERSPECTIVE AS A PARTY TO THE AGREEMENT. IF LEGAL ADVICE IS REQUIRED IN CONNECTION WITH THIS MATTER YOU SHOULD SEEK SUCH ADVICE FROM OUTSIDE COUNSEL.