

ORDINANCE NO. _____

Ordinance Of The City Council Of The City Of Emeryville Adopting The Second Major Amendment To Public Market Development Agreement (Also Known As The Marketplace Redevelopment Project) To Postpone Payment Of Housing Fees To Allow The Applicant Opportunity To Obtain Planning And Building Permits For A Potential Housing Project On Parcels A And B, To Extend The Term Of The Development Agreement, And Other Related Amendments (APN Nos. 49-1556-15; -16; -17, And -24) (CEQA Determination: Exempt Pursuant To State CEQA Guidelines Section 15332 And 15061(b)(3))

WHEREAS, on December 1, 2015, the City Council passed Ordinance No. 15-010, approving a Development Agreement (DA) for the Public Market Project (also known as the Marketplace Redevelopment Project), following a recommendation from the Planning Commission on June 25, 2015; and

WHEREAS, Section 7.1 of the DA stipulates that Parcel A shall include 18 affordable units, including eight low-income units and ten moderate income units. This requirement was based on 11% of the 167 dwelling that were approved to be constructed on Parcel A; and

WHEREAS, the Marketplace Planned Unit Development/Preliminary Development Plan (PUD/PDP) was sold to New York-based Oxford Properties ("Oxford") in the spring of 2021 who, on April 9, 2021, applied for a new Final Development Plan (FDP) to replace the existing entitlements on Parcels A and B and provide for development on Parcel F; and

WHEREAS, the new proposal was to construct three buildings comprised of a ten-level approximately 421,000 square foot Research and Development building, a pavilion building of about 3,000 square feet of ground floor retail space, and a six-level parking garage accommodating 711 parking spaces (the "Oxford Proposal"); and

WHEREAS, the Oxford Proposal (FDP21-001) necessitated amendment of the Planned Unit Development / Preliminary Development Plan (PUD/PDP) to transfer the requirement to develop 10 townhome units on Parcel A (also referred to as the "Shellmound Building" in the approved PUD/PDP) to Parcel F (referred to as "Retail Pad #1" in the approved PUD/PDP), and to change the maximum height on Parcel B from 120 feet to 175 feet. The Planning Commission recommended approval of this PUD amendment on August 25, 2022, and the City Council approved this PUD Amendment on October 4, 2022 (Ordinance No. 22-009); and

WHEREAS, to effectuate Oxford's proposal for Research and Development on Parcel A, the DA was amended by that certain First Major Amendment to Public Market Development Agreement dated December 16, 2022 (the "First Major Amendment") to remove the obligation to develop eight low income and ten moderate income residential units on Parcel A and in consideration required Oxford to (1) remit \$20 million to the City's Affordable Housing Fund, inclusive of any affordable housing impact Fee (the "Parcel A Affordable Housing Fee"); (2) support any City of Emeryville-supported application to

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secure affordable housing tax credits; and (3) pedestrianize Market Drive south of 62nd Street between the hours of 10 a.m. and 9 p.m. seven days a week; and

WHEREAS, pursuant to the First Major Amendment, the Parcel A Housing Fee is to be paid as follows: \$10 million by June 30, 2023, and the remaining amount in three equal annual installments on June 30 of 2024, 2025 and 2026; and

WHEREAS, Oxford paid the initial \$10 million of the Parcel A Housing Fee on June 21, 2023 and \$3.3 million on June 14, 2024. The next installment of \$3.3 million is due by June 30, 2025; and

WHEREAS, due to the current market conditions for research and development space, Oxford has not yet commenced work on the development under this entitlement and is now interested in pursuing residential uses on Parcels A and B, which necessitate amendment of the DA; and

WHEREAS, the City and Oxford have negotiated the terms of a proposed Second Major Amendment to Public Market Development Agreement (the “Second Major Amendment”); and

WHEREAS, the Second Major Amendment, attached hereto as Exhibit A, sets for the activities and milestones associated with entitlement of residential uses on Parcel A and Parcel B and provides that further payments of the Parcel A Housing Fee may be tolled pending successful achievement of these milestones; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed Second Major Amendment on May 22, 2025 to solicit public comments and review and consider the proposed amendments, and then voted to recommend that the City Council approve the proposed amendments; and

WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed Second Major Amendment on June 17, 2025; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, and the proposed Second Major Amendment to the Public Market Development Agreement as set forth in Exhibit A attached to this Ordinance and the applicable standards of the Emeryville Planning Regulations (“the Record”);

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NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt an amendment to the Public Market Development Agreement to postpone payment of housing fees to allow the developer the opportunity to obtain planning and building permits for a potential housing project on Parcels A and B, to extend the term of the Development Agreement, and to make other related amendments.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

In approving the proposed Second Major Amendment to the Public Market Development Agreement, as required by Section 9-7.1104 of the Planning Regulations, the City Council makes the following findings:

- (1) The development agreement is consistent with the General Plan and any applicable specific plan.

The General Plan Land Use Designation for the subject property is “Mixed Use With Residential” and “Major Transit Hub”. The Mixed Use with Residential classification is described as allowing “One or more of a variety of residential and nonresidential uses...”.

Further, General Plan Policy LU-P-2 states “The Powell/Christie/Shellmound/I-80 core area will be developed into a compact but high-intensity regional transit hub. This hub will include a retail core, with stores, restaurants, and hotels; a financial and commercial center, creating a daytime work population; and a *residential neighborhood, providing vitality during non-work hours*” (emphasis added). The 2023-2031 Housing Element of the General Plan Goal H-1 is to “Facilitate the construction of a wide variety of housing types, for various income levels, in a manner that promotes environmental responsibility and long-term sustainability.”

The proposed Second Major Amendment provides a pathway for the introduction of residential uses in this area, consistent with the applicable General Plan goals and policies..

- (2) The development agreement is in the public interest.

The proposed Second Major Amendment would facilitate the development of housing on a site currently principally entitled for

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research and development and parking. In the current real estate market environment, research and development is financially infeasible as evidenced by the current decline in construction of this type of development and current vacancy rates in excess of 30%. Because the research and development project is infeasible, it cannot be constructed in the near term and will not contribute to the City fiscally, nor to the community in the form of increased economic activity and fulfillment of the General Plan Policy calling for an vital transit hub area. Additionally, the Policies and Goals of the 2023-2031 Housing Element of the General Plan and the City of Emeryville's designation by the State as a "Pro-Housing" jurisdiction evidence general policy support for the development of housing. For these reasons, the proposed Second Major Amendment is in the public interest.

SECTION THREE: ADOPTION OF FIRST MAJOR AMENDMENT TO THE PUBLIC MARKET DEVELOPMENT AGREEMENT

Based on the findings set forth in this Ordinance, and the evidence in the record, the City Council hereby approves the Second Major Amendment to the Public Market Development Agreement in substantial form as set forth in Exhibit A, which is incorporated into this Ordinance by this reference.

SECTION FOUR: CEQA DETERMINATION

This action is exempt from environmental review under State CEQA Guidelines Section 15332 which applies to infill development projects and Section 15061(b)(3) because it can be seen with certainty that there is no possibility that extending time for compliance with terms in the Agreement may have a significant effect on the environment because this is an administrative action that does not authorize any construction.

SECTION FIVE: SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SIX: CODIFICATION.

This Ordinance shall not be codified in the Emeryville Municipal Code.

SECTION SEVEN. EFFECTIVE DATE AND POSTING.

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This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by California Government Code Section 33693.

This Ordinance was **INTRODUCED AND FIRST READ** by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 17, 2025, and **PASSED AND ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, July 1, 2025, by the following vote:

AYES:	_____	_____
NOES:	_____	_____
ABSTAIN:	_____	_____
ABSENT:	_____	_____

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DocuSigned by:
John Kennedy
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CITY ATTORNEY

ATTACHMENTS

- Exhibit A – Second Major Amendment of Public Market Development Agreement