

**ORDINANCE NO. 16. –\_\_**

**Ordinance Of The City Council Of The City Of Emeryville Adopting A Planned Unit Development Zoning Designation And Approving A Preliminary Development Plan On The 10.05-Acre Sherwin Williams Project Site Bounded By Sherwin Avenue To The South, The Union Pacific Railroad Tracks To The West, Horton Street To The East, And Temescal Creek To The North (APNs: 49-1041-26-15 And -16), And Adopting An Amendment To The Planning Regulations To Add The Sherwin Williams Mixed Use Project To The List Of Planned Unit Developments In Section 9-3.310**

**WHEREAS**, LMC Emeryville I Investor LLC (“Applicant”) proposes to construct a mixed use project comprised of up to 500 multi-family residential units, a minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor retail/restaurant/office space, 74,000 square feet of office space, parking garages, open, space, infrastructure and landscaping on the former Sherwin Williams paint factory parcel and adjacent City-owner parcel bounded by Sherwin Avenue to the south, the Union Pacific Railroad tracks to the west, Horton Street to the east, and Temescal Creek to the north (“Project; and

**WHEREAS**, the Project requires an amendment to the General Plan to modify the Land Use Diagram (Figure 2-2) to reflect the proposed relocation of Park/Open Space and Mixed Use with Residential on the Project site and to modify the Maximum Residential Densities map (Figure 2-6) to be consistent with the Land Use Diagram; and

**WHEREAS**, on September 6, 2016, the Emeryville City Council certified the Final Environmental Impact Report for the Project, including the proposed General Plan amendment, as adequate under California Environmental Quality Act (Resolution No. 16-122); and

**WHEREAS**, on September 22, 2016, at a duly and properly noticed public hearing, the Planning Commission adopted Resolution No. EIR 16-03, reviewing and applying the Final EIR to the Project; recommending that the City Council adopt the Mitigation Measures and making findings as required by the California Environmental Quality Act; and

**WHEREAS**, on September 22, 2016, at a duly and properly noticed public hearing, the Planning Commission recommended that the City Council approve the proposed amendment to the General Plan, and recommended adoption of a Planned Unit Development (PUD) zoning designation and approval of a Preliminary Development Plan (PDP) (Resolution No. PUD 13-001); and

**WHEREAS**, on October 18, 2016, the City Council held a duly and properly noticed public hearing and took testimony about the Project, including the proposed amendment to the General Plan; and

**WHEREAS**, on October 18, 2016, following the public hearing, the City Council adopted Resolution No. 16- \_\_ , applying the Final EIR to the Project, and making certain findings of fact regarding impacts, adopting the Mitigation Monitoring and Reporting Program, and making certain findings related to alternatives and a statement of overriding considerations; and

**WHEREAS**, on October 18, 2016, following the public hearing, the City Council adopted Resolution No. 16- \_\_ adopting the proposed amendment to the General Plan to modify the Land Use Diagram (Figure 2-2) to reflect the proposed relocation of Park/Open Space and Mixed Use with Residential on the Project site and to modify the Maximum Residential Densities map (Figure 2-6) to be consistent with the Land Use Diagram; and

**WHEREAS**, the City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, and the proposed Sherwin Williams Mixed Use Project, subject to the conditions and requirements set forth in Exhibit B attached to this Resolution and the applicable standards of the Emeryville Planning Regulations (“the Record”);

**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 a Planned Unit Development zoning designation and to approve a Preliminary Development Plan on the 10.05-acre Sherwin Williams project site bounded by Sherwin Avenue to the south, the Union Pacific railroad tracks to the west, Horton Street to the east, and Temescal Creek to the north (APNs: 49-1041-26-15 and -16), and to adopt an amendment to the Planning Regulations to add the Sherwin Williams Mixed Use Project to the list of Planned Unit Developments in Section 9-3.310.

#### **SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE**

Planned Unit Development. The City Council makes the following findings to create a PUD zone and adopt a preliminary development plan, pursuant to Section 9-7.1004(a) of the Emeryville Municipal Code:

- (1) The proposed planned unit development conforms to the adopted General Plan and any other applicable plans.

General Plan goals (G) and policies (P) that are particularly germane, and with which the project is consistent, include:

- LU-G-2      A mix of housing types – A diversity of housing types to accommodate a variety of household sizes and incomes.***
- LU-G-9      Appropriately scaled buildings – heights and massing that do not appear monolithic.***
- LU- P-1      Land uses will be consistent with the Land Use Classifications in section 2.4 and the Land Use Diagram, Figure 2-2.***
- LU-P-5      Retail uses will be concentrated in areas with Neighborhood or Regional Retail overlays, near neighborhood centers, and in the Emeryville Marketplace.***
- LU-P-18     The reuse of the Sherwin Williams site shall include a mix of residential and nonresidential uses with ample open space, centered on an extension of the Emeryville Greenway connecting Horton Landing Park and the Park Avenue District.***
- PP-P-6      The north-south Emeryville Greenway will be expanded, enhancing its role as an open space corridor and connector across the City, and a source of inspiration and community pride. The City will support the expansion of a park at the Sherwin Williams site, in coordination with the development of Horton Landing Park and the Greenway.***

The project will provide a standalone affordable housing building in addition to market rate units in three other buildings. In addition, live-work units are also contemplated in the project. The building footprint along street frontages maintain a setback and the building heights are also stepped back so as to maintain the scale of the surrounding buildings.

General Plan goals policies (P) that are related to Urban Design, and with which the project is consistent, include:

***UD-P-46 Street trees shall be provided on City streets where feasible. Street trees shall be planted in a row along the curb, between the vehicle roadway and sidewalk, unless this is physically impossible due to constraints such as underground water or sewer lines.***

***UD-P-47 Streetscape landscaping shall follow Bay-Friendly Landscaping guidelines and serve the dual purpose of treating stormwater runoff and providing shade and beauty to the urban realm.***

New street trees have been provided along the new Hubbard Street extension and 46<sup>th</sup> Street and are proposed in a row along the curb between the road and sidewalk. In addition, conditions of approval require the project to follow Bay-Friendly Landscaping guidelines and the plans allow the use of the trees to treat stormwater where possible.

General Plan goals (G) and policies (P) that are related to Transportation, and with which the project is consistent, include:

***T-G-4 A walkable city – provide an accessible, safe, pleasant, convenient, and integrated pedestrian system that provides links within the city and to surrounding communities, and reduces vehicular conflicts.***

***T-P-1 The City’s circulation plan shall be as set forth in Figures 3-1 through 3-8 and based on typologies described in the Transportation Chapter of the General Plan.***

***T-P-2 The design, construction, operation, and maintenance of city streets shall be based on a “complete streets” concept that enables safe, comfortable, and attractive access and travel for pedestrians, bicyclists, motorists, and transit users of all ages and abilities.***

***T-P-4 Transportation planning shall be coordinated with emergency service providers to ensure continued emergency service operation and service levels.***

***T-P-10 The pedestrian circulation system shall be as set forth in Figure 3-4 and based on the typologies described in the General Plan Transportation Chapter.***

***T-P-12                    The City will plan, upgrade, and maintain pedestrian crossings at intersections and mid-block locations by providing safe, well-marked crosswalks with audio/visual warnings, bulb-outs, and median refuges that reduce crossing widths.***

The design of two new streets, Hubbard Street extension and 46<sup>th</sup> Street is based on the “complete” streets concept that allows for on-street parking, wide sidewalks that provide street trees between the curb and pedestrian path, and adequate lighting via light poles. In addition, the project provides ample pedestrian connections within and to the project site by creating an east-west “pass through” pedestrian and bicycle alley in the existing Building 1-31 that will align with 45<sup>th</sup> Street on the east and terminate at the new public park on the west. In addition, walkability is further increased by extension of the Greenway along the western property edge.

General Plan policies (P) related to Conservation, Safety, Noise, and Sustainability that are particularly germane, and with which the project is consistent, include:

***CSN-P-10    New development is required to incorporate source control, site design, and storm water treatment to reduce pollutants in stormwater runoff.***

***CSN-P-11    Exterior uses of water for landscaping and other purposes shall be reduced to minimize or eliminate runoff and water waste.***

***CSN-P-33    In order to reduce light pollution and use less energy, lighting (including on streets, recreational facilities, and in parking areas) should be designed to prevent artificial lighting from illuminating natural resources or adjacent residential neighborhoods.***

***CSN-P-44    The City will continue to require development projects to implement on-site stormwater management measures through the City’s development permit process.***

***ST-P-5        The City shall encourage, promote, practice, and where feasible, require Bay-Friendly landscaping practices as defined in the Bay-Friendly Landscape Guidelines, Sustainable Practices for Landscape Professionals.***

The Citywide design guidelines that apply and are particularly germane, and with which the project is consistent via design and/or Conditions of Approval, include:

***Site Planning:***

- C-1 Consider the three-dimensionality of buildings: how they are perceived from the ground level, public streets, and side streets; and how they can contribute to, or detract from, the views, neighborhood or district character, and overall quality of life.***
- C-2 Site buildings and locate plazas, building entrances, seating, and visually interesting architectural features to encourage interaction among occupants and passersby.***
- C-4 Consider edge conditions and transition areas during site design to ensure compatibility between existing and new development.***
- C-6 Conceal all mechanical, electrical, and other building equipment from the public right-of way and from other existing buildings, where feasible. Use screening materials and other buffers to minimize noise and visual impacts. Mechanical equipment should not be located along the ground floor street frontage.***

Building heights are stepped back such that the tallest edge of the buildings are not within line of sight as seen from the street. In this way, the project heights are in proportion and compatible to the surrounding buildings as seen from the public streets outside the project i.e. Sherwin Avenue and Horton Street. Conditions of Approval ensure that all mechanical and other equipment will be adequately screened from the public right-of-way. In addition, the new public park as well as two public plazas allow opportunities for designing building entrances that encourage interaction among occupants and passersby.

***Building Massing:***

- D-1 In areas where building heights transition, step back upper levels of buildings to transition to adjacent lower building heights.***

- D-2 Encourage variation and articulation through changes in height and massing.***
- D-3 Create buildings openings that permit midblock pedestrian connections, thereby breaking up “super blocks” and expanding the pedestrian network.***
- D-7 Design of new buildings should consider shadow impacts on surrounding areas. 3D modeling is recommended to test the effect of building heights and massing on sidewalks and streets, in terms of shadows.***

***Sidewalks and Green Streets (Policies A-1 to A-3 and I-23)***

Generally, the Design Guidelines call for a minimum of 11.5 foot wide sidewalk, including 7.5 feet for a pedestrian pathway and 4 feet for a landscaped area between the pedestrian pathway and curb. Additionally, Sherwin Avenue, Hubbard Street extension, and Horton Street between Sherwin Avenue and 45<sup>th</sup> Street are designated “Green Streets” that calls for a 15-foot minimum sidewalk corridor, including 8 feet for a pedestrian pathway, 5 feet for a landscaped area next to the curb, and 2 feet for a landscaped area next to the adjacent property (Figure 3-6 of Emeryville Design Guidelines). Where the Greenway is separate from a street, the Design Guidelines call for a 20 foot minimum corridor including a 10 foot paved pedestrian/bicycle pathway and a 6 foot unpaved path separated by 4 feet of landscaping (Figure 3-5 of Emeryville Design Guidelines).

The Hubbard Street extension is designed as a 66-foot right of way with a 36- foot roadway, 5-foot planter strip between the curb and pedestrian pathway, 8-foot pedestrian pathway, and 2-foot landscaped area adjacent to the property line, thereby providing a minimum sidewalk width of 15 feet on both sides of the street. Thus, Hubbard Street extension is in compliance with the “Green Street” requirement.

The Sherwin Avenue street section shows compliance with the Green Street sidewalk width with an 8-foot clear pedestrian path, a 5-foot landscape area next to the curb; and a 2-foot landscape corridor between the sidewalk and the building wall.

In the interest of preserving existing mature trees along the Horton Street frontage, it is not possible to comply with the Green Street

**sidewalk width; however, there is a clear pedestrian pathway of 8 feet.**

**The Greenway along the railway tracks provides a 20 foot multi-use trail with a 15-foot concrete pathway and a 5 foot decomposed granite path, in conformance with the Design Guidelines.**

**Sherwin Avenue between Hubbard Street and Halleck Street is designated as a Class II/III bikeway in the General Plan, and as a Class III Bicycle Route in the Pedestrian and Bicycle Plan, meaning that the roadway should be designed to be shared with bicycles. Condition of Approval Number II.E.4 requires bicycle signage on Sherwin Avenue.**

**The Park Avenue District Plan guidelines that apply and are particularly germane, and with which the project is consistent via design and/or Conditions of Approval, include:**

- Work with surrounding property owners and businesses to time-share parking.**
  - Residential projects should include units with multiple bedrooms that could accommodate families.**
  - Development of large sites (1 acre or greater) should include residential or live/work units.**
  - Encourage new development north of Sherwin Avenue and west of Horton Street (i.e. on the Sherwin Williams site) to include a public park or parks with ample green space.**
  - Provide active uses on the street frontage of buildings.**
  - Create a cultural arts center or a permanent home for Emeryville Art Exhibition.**
- (2) The proposed planned unit development will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood or community.

**The Project will create a new neighborhood that is fine-grained, providing bicycle and pedestrian connections via the Greenway, a new Green Street (Hubbard Street extension) to other neighborhoods and a “pass through” alley in an existing building that will result in**



**extension of the 45<sup>th</sup> Street corridor through the site terminating at a new public park. Building massing has been appropriately designed such that building heights are stepped back from the street frontages. In addition, ground floor spaces have been assigned for active uses such as retail, restaurant, residential amenities and other similar uses to create an integrated, well-planned development that provides well-lit tree-lined streets with ample sidewalks.**

- (3) The project site is suitable for the uses permitted in the planned unit development in terms of access, size of parcel and relationship to similar or related uses.

**The site is large and accessible enough to accommodate the proposed primarily residential use with 74,000 square feet of office and approximately 2,000-8,000 square feet of other commercial uses. The project will primarily redevelop existing vacant space of the former paint factory site and provide for a balanced in-fill development in a neighborhood that is a mix of commercial and residential development including the adjacent Artists Cooperative housing.**

**The site is currently zoned Mixed Use (M-U) and Park/Open (PO); the proposed uses are consistent with the types of uses permitted in a Mixed Use district and the project provides the required amount of Park/Open Space.**

- (4) The location, size, coverage, density, design and operating characteristics of the proposed planned unit development will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

**The project design incorporates building setbacks; building heights and a creation of a more grid-like street pattern to ensure that the urban grid pattern of Emeryville is reflected and that building scale and massing are consistent with surrounding and adjacent land uses that primarily consist of residential and commercial development that are two to three stories high.**

- (5) The subject property will be developed with due regard for aesthetic quality and landscaping so as to reduce, to the extent feasible, significant negative impacts on the environmental quality, value, or stability of the site or the environmental quality or value of improved or unimproved property in the area.

**The streetscape reflects an urban setting and will be enhanced with broad sidewalks, trees, flowering plants, street furniture, and lighting. The project also proposes a new City park and other open areas thereby providing substantial open space amenities for all development in the vicinity. At the time of approval of Final Development Plans for each building, the design of buildings will be required to comply with applicable design guidelines, and will therefore include design features that incorporate well-articulated architecture with variations in building planes, colors and materials, balconies and trellises.**

- (6) The proposed planned unit development will be developed to allow originality which does not have significant adverse impacts on the environmental quality or value of improved or unimproved property or prevent appropriate development and use of such areas.

**The proposed planned unit development reconfigures the required open space by providing a new public park, extension of the Greenway and two other public plazas. The adverse environmental impacts that are identified in the Final EIR have been mitigated to a less than significant level or have been deemed acceptable because of overriding considerations as set forth in City Council Resolution No. \_\_\_\_\_.**

- (7) The proposed planned unit development has been designed to include open space, parking areas; pedestrian walks, signs, illumination and landscaping (including irrigation) to enhance the environmental quality of the site.

**The project consolidates a City parcel adjacent to the railroad to build a new public park, the Greenway extension and two public plazas. In addition, the development pattern is designed to provide maximum pedestrian circulation via a “pass through” alley within an existing building for cyclists and pedestrians and landscaping throughout the site. Other features such as car –share, bike share station, bike lockers and a new shuttle running to West Oakland are proposed to encourage non-vehicular modes of travel.**

Significant Structures. The City Council makes the following finding for preservation and reuse of a significant structure pursuant to Emeryville Municipal Code Section 9.5.1206(a)(1):

- (1) That the proposed project will retain and enhance all or most of the features of the structure that make it significant, as described and indicated in Table 9-5.1210.

**The project proposed preserve and reuse the existing Building 1-31 which is identified as Significant Structure Number 37 in Table 9-5.1210 with the following significant features: contrasting concrete and brick, three stories, window pattern, windows recessed with concrete sills, north end symmetric concrete and windows around entrance. The proposal involves installing a 24-foot wide “pass through” alley for pedestrians and cyclists that will involve removal of a roll up door which is not considered a significant feature. All the significant features of Building 1-31 will be retained and enhanced with the general upgrade and retrofit of the building.**

Affordable Housing. The City Council makes the following finding to allow the project’s affordable units to be contained within a single building rather than dispersed throughout the project, pursuant to Emeryville Municipal Code Section 9.5.408(c):

**The provision of affordable units in a single building is compelling for the following reasons: a stand-alone building allows for a provision of deeper levels of affordability, it allows for partnering with a affordable housing developer with experience to provide on-site social services on a continuing basis; and as conditioned, its impact on the land uses for other proposed and existing affordable housing projects within the City will be mitigated by not competing for the funding that supports those land uses.**

### **SECTION THREE: ADOPTION OF PLANNED UNIT DEVELOPMENT ZONING DESIGNATION AND APPROVAL OF PRELIMINARY DEVELOPMENT PLAN**

Based on the findings set forth in this Ordinance, and the evidence in the record as a whole, the City Council hereby establishes a Planned Unit Development (PUD) zoning designation for the Sherwin Williams Project site by amending the Zoning Map as depicted in Exhibit A, and approves the Sherwin Williams Preliminary Development Plan (PDP) dated September 13, 2016 for the 10.05 acre site bounded by Sherwin Avenue to the south, the Union Pacific Railroad tracks to the west, Horton Street to the east, and Temescal Creek to the north. (APNs 49-1041-26-15 and 49-1041-26-16), attached hereto as Exhibit C, subject to the Conditions of Approval as set forth in Exhibit B. By approving the Sherwin Williams PDP, the uses, building intensity, building height, setbacks, landscaping, screening, off-street parking and loading, signage, illumination and basic guidelines for development shall be governed by the Sherwin Williams PDP.

#### **SECTION FOUR: AMENDING PLANNING REGULATIONS**

The City Council hereby amends the Planning Regulations in Title 9 of the Emeryville Municipal Code as follows:

Figure 9-3.103(a), Zoning Map, is amended as depicted in Exhibit A.

Section 9-3.310 is amended to add subsection (a)(7) to read as follows:

- (7) Sherwin Williams Mixed Use Project. Created by Ordinance No. 16-\_\_ passed on November 1, 2016.

#### **SECTION FIVE: CEQA DETERMINATION**

On September 6, 2016, the City Council certified the Final Environmental Impact Report for the Project as adequate under California Environmental Quality Act (Resolution No. 16-122). By Resolution No. 16 - \_\_\_\_\_, the City Council has applied the the Sherwin Williams Environmental Impact Report to the Sherwin Williams Development Project; and made findings as required by the California Environmental Quality Act (CEQA); and adopted mitigation measures for the Project. Pursuant to State CEQA Guidelines Section 15094, the City Council hereby directs staff to file a Notice of Determination with the Alameda County Clerk.

#### **SECTION SIX. 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 SEVEN. CODIFICATION.**

Section Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Three, Five, Six, Seven, and Eight shall not be codified.

#### **SECTION EIGHT. EFFECTIVE DATE AND POSTING.**

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 on Tuesday, October 18, 2016, and passed and adopted by the City Council at a regular meeting held on Tuesday, November 1, 2016 by the following vote:

AYES:  \_\_\_\_\_  
NOES:  \_\_\_\_\_  
ABSTAIN:  \_\_\_\_\_  
ABSENT:  \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:



\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
CITY ATTORNEY

Attachments:

- Exhibit A – Zoning Map showing designation of the new PUD classification
- Exhibit B – Conditions of Approval
- Exhibit C – Preliminary Development Plan dated September 13, 2016