



**MEMORANDUM**

**DATE:** June 17, 2025

**TO:** LaTanya Bellow, City Manager

**FROM:** Chadrick Smalley, Community Development Director

**SUBJECT:** 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)))

**RECOMMENDATION**

The Planning Commission and staff recommend that the City Council waive first reading and introduce by title only the attached Ordinance amending the Development Agreement for the Public Market project.

**BACKGROUND**

Marketplace PUD/PDP

On August 5, 2008, the City Council adopted Ordinance No. 08-004 approving the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP). Between February 2015 and June 2016, the Planning Commission approved a number of Final Development Plans (FDPs) and a subdivision map to allow for a grocery store (Parcel C1); realignment of Shellmound Street; creation of 62nd Street, 63rd Street, and Market Drive; construction of three residential buildings (Parcel A, Parcel C2, and Parcel D); a parking structure with ground floor retail (Parcel B); and the redevelopment and expansion of Christie Park (Parcel E).

The construction of the grocery store building (Parcel C1) and the realignment of Shellmound Street and creation of 62nd and 63rd Streets and Market Drive, two residential buildings (Parcel C2 and Parcel D), and Christie Park (Parcel E) are now complete.

The first FDP for Parcel B (FDP15-001) was originally approved on June 23, 2016, which accommodated parking with ground floor retail. This parking garage was to provide parking for existing commercial uses that have been served by previous surface parking

lots (Parcel C) and are being served by existing surface parking lots (Parcel A). Subsequently, the applicant proposed to replace this FDP for Parcel B with a new FDP to accommodate 150,000 square feet of Research and Development (office/lab) space in addition to ground floor retail space and 565 parking spaces (FDP18-001). This was approved by the Planning Commission at its January 24, 2019, meeting, thereby rescinding FDP15-001 previously approved in 2016. This decision was appealed by Wareham Development. On January 21, 2020, after a year of project modifications and hearings, the City Council approved a slightly different proposal accommodating the same amount of office/lab space.

The one remaining site in the PUD/PDP without an approved FDP is Parcel F (called "Retail Pad #1" in the PUD/PDP), at the northwest corner of Shellmound Street and Shellmound Way. The PUD/PDP called for this to be developed with a one-story, 3,500 square foot retail pad. No FDP application for this site has previously been submitted or approved.

#### Change in Ownership & Current FDPs

The majority of the properties comprising the Marketplace PUD/PDP were sold to New York-based Oxford Properties ("Oxford") in the spring of 2021. At that time there were two existing entitlements at the Marketplace that remained unbuilt: a residential project accommodating 167 units on Parcel A, and a Research and Development building of 150,000 square feet of office/lab space with 15,700 square feet of ground floor retail space, and 500 parking spaces on Parcel B.

On April 9, 2021, Oxford applied for a new FDP to replace the existing entitlements on Parcels A and B and provide for development of 18 residential units on Parcel F. This new FDP included three buildings: 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 residential units on Parcel A were no longer proposed and were replaced by a monetary contribution to the City's affordable housing fund.

This latest FDP proposal (FDP21-0001) necessitated amendments to the PUD/PDP to transfer the requirement for ten townhome units from Parcel A to Parcel F, 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 the amendment on October 4, 2022 through the adoption of Ordinance No. 22-009. This PUD amendment was approved in conjunction with the First Major Amendment to the Development Agreement, which removed the obligation to develop affordable residential units on Parcel A in consideration of a contribution of \$20 million to the City's Affordable Housing Fund (Ordinance No. 22-10).

The new FDP was subsequently approved by the Planning Commission on October 27, 2022.

## Public Market Development Agreement

On December 1, 2015, the City Council passed Ordinance No. 15-010, approving a Development Agreement (DA) for the Public Market Project. The DA had previously been reviewed and recommended for approval by the Planning Commission on June 25, 2015.

The DA covers a variety of topics, one of which is affordable housing. Specifically, 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 units that were approved to be constructed on Parcel A.

To effectuate Oxford's proposal for Research and Development on Parcel A, the DA was modified by the First Major Amendment to the DA (the "First Major Amendment") to remove the obligation for the residential development on Parcel A. Specifically, it involved removal of the Parcel A residential development obligation, and to provide (1) remittance of \$20 million to the City's Affordable Housing Fund, inclusive of any affordable housing impact fee (the "Parcel A Housing Fee"), and the timing of the remittance of the funds; (2) commitment from Oxford to support any City-supported application to secure affordable housing tax credits; and (3) agreement to pedestrianize Market Drive South of 62<sup>nd</sup> Street between the hours of 10 a.m. and 9 p.m., seven days a week.

Regarding the Parcel A Housing Fee, the First Major Amendment requires that the amount attributable to Affordable Housing Impact Fees would be paid prior to issuance of the first building permit that includes foundation work on either Parcel A or B, and the balance of the fee due prior to issuance of a Temporary Certificate of Occupancy for any building on Parcel A or B. Further, regardless of the timing of building permit applications, \$10 million of the \$20 million total amount was due by June 30, 2023, and the remaining \$10 million is to be paid in three equal annual installments, on June 30 of 2024, 2025 and 2026. The applicant paid the initial \$10 million on June 21, 2023 and the \$3.3 million installment on June 14, 2024. The next installment of \$3.3 million is due by June 30, 2025.

Given the current difficult market conditions for Research and Development space, Oxford has not commenced on work on this entitlement and is now interested in pursuing residential uses on Parcel A and B, necessitating amendments to the Development Agreement and existing entitlements.

## **DISCUSSION**

As described above, the DA was amended by the First Major Amendment to remove the obligation to develop residential uses on Parcel A in exchange for the Parcel A Housing Fee. The applicant now wishes to explore the reintroduction of residential uses on both Parcel A and Parcel B and, accordingly, a tolling (postponement) of the payments of the Parcel A Housing Fee required by the First Major Amendment. Staff and the applicant have negotiated the terms of the Second Major Amendment to the Development Agreement (the "Second Major Amendment", Exhibit A to the attached Ordinance), as follows:

### *Term*

The DA currently expires on January 13, 2028. To allow time for the re-entitlement of residential uses in consideration of the schedule outlined below, the Second Major Amendment would extend the term to March 1, 2029, or 12 months after submittal of the building permit application for a residential development on Parcel B, whichever is later.

### *Developer Obligations*

The applicant would advance entitlement of residential uses on Parcel A and Parcel B in accordance with the following milestones:

#### Parcel A:

<u>Milestone</u>	<u>Deadline</u>
Submit illustrative concept plans with sufficient detail for Planning Commission Study Session	By December 1, 2025
Submit application for FDP and PUD/PDP Amendment (if applicable)	By December 1, 2026
Submit application for building permit	By December 1, 2027, or 9 months following approval of the FDP
Fulfill all requirements and pay all fees for issuance of building permit	By December 1, 2028, or 12 months following submittal of building permit application

#### Parcel B:

<u>Milestone</u>	<u>Deadline</u>
Submit proforma statements for residential project, including ownership product types, supporting determination of feasibility. If feasible, the subsequent milestones apply.	By December 1, 2025
Submit illustrative concept plans with sufficient detail for Planning Commission Study Session	By June 1, 2026
Submit application for FDP and PUD/PDP Amendment	By March 1, 2027
Submit application for building permit	By March 1, 2028, or 9 months following approval of the FDP/PUD/PDP Amendment
Fulfill all requirements and pay all fees for issuance of building permit	By March 1, 2029, or 12 months following submittal of building permit application

### *Parcel A Housing Fee Tolling*

During the time the applicant is proceeding with the milestones outlined above, further payments of the Parcel A Housing Fee will be tolled with the following exceptions:

- If the applicant fails to submit the illustrative concept plans for Parcel A and the financial feasibility information for Parcel B by December 1, 2025, the payment that was due June 30, 2025 becomes due December 30, 2025.
- If the applicant fails to submit the application for an FDP for Parcel A by December 1, 2026, the payments that were due June 30, 2025, and June 30, 2026 become due December 30, 2026.
- If the applicant fails to submit the application for a building permit for Parcel A by December 1, 2027 or 9 months after approval of the FDP, whichever is later, the payments that were due June 30, 2025, and June 30, 2026 become due 6 months after the passage of this deadline.

For all of the above scenarios, if a tolled payment becomes due the amounts will be escalated by a 4% annual yield factor, this amount representing what the City may have earned on these funds if they were held in the Local Agency Investment Fund.

If the applicant, at any point, proceeds with the existing *nonresidential* entitlements on either Parcel A or Parcel B, the entire outstanding amount of the Parcel A Housing Fee is due with the application for a building permit for that project. Under the current DA and notwithstanding the payment dates outlined above, this fee is due partially at issuance of a building permit (for the amount attributable to Affordable Housing Impact Fees), and partially at issuance of a Temporary Certificate of Occupancy (for the remaining balance).

### *Parcel A Housing Fee Credit*

In the event the developer delivers a residential project on Parcel A, evidenced by obtaining a Certificate of Occupancy for the residential project, the City will credit the developer the Parcel A Housing Fee, net of any Affordable Housing Impact Fees due in connection with the Parcel A residential project.

### *Summary*

The proposed Second Major Amendment provides a pathway through which the applicant may explore, entitle and deliver a residential project on Parcel A and Parcel B, in exchange for tolling and possible future credit of funds paid and committed in connection with the First Major Amendment, the principal effect of which was to allow the developer to provide the City with funds to construct affordable housing, in exchange for the ability to deliver a nonresidential project on Parcel A.

The cost to the City to develop affordable housing is high relative to the private market

and increasing. This is due to prevailing wage requirements associated with affordable housing funding sources, changes in the affordable housing funding landscape, and the long time periods required to identify a site, select a developer, negotiate agreements and secure financing. The funds provided thus far through the Parcel A Housing Fee have not yet been programmed to any project.

In view of these considerations, staff recommends the most expedient and efficient method of delivering additional housing units would be to provide Oxford with the opportunity to do so on Parcel A, with the added benefit of exploring feasibility and sharing data regarding potential ownership housing on Parcel B.

### *Findings*

In order to approve the Second Major Amendment, the City Council must make findings pursuant to Section 9-7.1104 of the Planning Regulations. Staff believe that these findings can be made as described below:

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 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.

### *Environmental Review*

This action is exempt from environmental review under State CEQA Guidelines Section 15332, which applies to infill development projects, and the “common sense exemption” at 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.

### **FISCAL IMPACT**

The proposed Second Major Amendment provides a means by which the \$20 million contribution to the City’s Affordable Housing Fund (Fund No. 299) could be returned to Oxford if Oxford delivers a residential project on Parcel A. In the event Oxford does not meet the milestones specified in the Second Major Amendment, the \$20 million could increase by 4% annually, depending on the milestone not met. The funds paid to date (\$13.3 million) have not been programmed to any project.

### **STAFF COMMUNICATION WITH THE PUBLIC**

The Planning Commission reviewed the proposed Second Major Amendment at its May 22, 2025, meeting. The Commission unanimously recommended the City Council approve the Second Major Amendment, noting that the potential to restore residential use on Parcel A is a desirable outcome.

### **CONFLICT OF INTEREST**

None.

### **CONCLUSION**

After hearing a presentation from staff and receiving public testimony, staff and the Planning Commission recommend adoption the attached Ordinance approving amendment of the Public Market Project Development Agreement (DA).

**PREPARED BY:** Chadrick Smalley, Community Development Director

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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LaTanya Bellow, City Manager

**ATTACHMENTS:**

- Draft Ordinance for DA Amendment, including Exhibit A: Second Major Amendment to the Public Market Development Agreement