



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 20, 2022

**TO:** Adam Politzer, Interim City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **Marketplace Redevelopment Project: Amendments To Planned Unit Development/Preliminary Development Plan and Development Agreement**

**Ordinance Of The City Council Of The City Of Emeryville Adopting An Amendment To The Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP) To Transfer The Requirement For 10 Townhome Units From Parcel A (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 (APN Nos. 49-1556-15; -16; And -17) (CEQA Determination: Environmental Impact Report For Marketplace Redevelopment Project Certified By City Council on January 15, 2008)**

**Ordinance Of The City Council Of The City Of Emeryville Adopting An Amendment To The Development Agreement For The Public Market Project (Also Known As The Marketplace Redevelopment Project) To Remove The Parcel A Residential Development Obligation, And To Provide For A Monetary Contribution Of \$20 Million To The City In Exchange For Removal Of The Obligation To Provide 18 Affordable Housing Units On Parcel A, And Other Related Amendments (APN Nos. 49-1556-15; -16; -17, And -24) (CEQA Determination: Environmental Impact Report For Marketplace Redevelopment Project Certified By City Council on January 15, 2008)**

## RECOMMENDATION

The Planning Commission and staff recommend that the City Council adopt the above-entitled Ordinances amending the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan and Development Agreement.

## **BACKGROUND**

### **Marketplace PUD/PDP**

On August 5, 2008, the City Council passed 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 last set of approvals completed were for Parcel B. The first FDP (FDP15-001) for Parcel B 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 calls 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.

Currently there are two existing entitlements at the Marketplace that have not yet been built: a residential project accommodating 167 units on Parcel A, and a Research and Development building accommodating 150,000 square feet of office/lab uses with 15,700 square feet of ground floor retail space, and 500 parking spaces on Parcel B. As stated above, there are no entitlements for Parcel F beyond the PUD/PDP.

## **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 (also known as the Marketplace Redevelopment 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 that were approved to be constructed on Parcel A.

## **Project Proposal**

The Marketplace was sold to New York-based Oxford Properties in the spring of 2021. On April 9, 2021, the new owners 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 was subsequently modified, and, as currently proposed, is 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 residential units on Parcel F are no longer proposed and would be replaced by a monetary contribution to the City's affordable housing fund.

## **DISCUSSION**

This new FDP proposal (FDP21-001) requires amendments to the Planned Unit Development/Preliminary Development Plan (PUD/PDP) and to the Development Agreement (DA) as described below.

### Preliminary Development Plan Modifications:

There are two proposed modifications to the Preliminary Development Plan (PDP). The first amendment addresses the issue of residential development on Parcel A, or the "Shellmound Building" as it was originally referred to in the PDP. As noted above, there is an existing entitlement on Parcel A for construction of 167 units. The approved PUD/PDP shows a residential tower on Parcel A above ground floor retail, but the conditions of approval allow this to be converted to other permitted uses, including Research Services (i.e., Research and Development). However, Condition III.A.1.d. stipulates that "If the Shellmound Building tower is not residential, then FDP shall include at a minimum 10 townhomes above the retail in the general location shown on the Plans." Thus, the PUD/PDP requires Parcel A to contain a minimum of 10 residential townhouse units.

As the proposed FDP does not contain any residential development on Parcel A, an amendment to this Condition of Approval is needed. The proposed change is outlined below with added language underlined and deletions shown by ~~strike-out type~~.

Condition of Approval Number III.A.1(d) of PUD04-02 shall be revised to read as follows:

The intent of the PDP is to achieve a vibrant, mixed-use neighborhood. The Final Development Plan may allow any use, including multi-family residential and any use allowed on Table 1 above; provided however, that if any allowed use other than the allowed use designated on the Preliminary Development Plan, or any increase in the square footage or number of units is proposed in any building designated as residential in the Preliminary Development Plan, the Applicant shall submit a traffic study and the City shall require appropriate compliance with the California Environmental Quality Act prior to approval.

If the Shellmound Building tower is not residential, ~~then FDP shall include at a minimum of 10 townhomes~~ shall be included on Retail Pad #1 ~~above the retail in the general location shown on the Plans.~~ The applicant shall maximize unit count of townhomes to the extent possible. Non-residential buildings should be (i) developed primarily as a build-to-suit to ensure a high level of quality and (ii) shall be of high-quality design and materials eligible for green building certification under the USGBC LEED program.

Note that “Retail Pad #1” was how the PUD/PDP referred to what is now called “Parcel F”. This change in the Condition of Approval would not require construction of housing on Parcel F at this time, or as part of the currently proposed FDP, but would preserve a requirement to construct at least 10 units of housing on Parcel F in the future.

The second amendment involves a clarification and change in height of the proposed Research and Development (R & D) Building. The PDP Build-Out Plan (Attachment 1) indicates the maximum height on the Parcel B portion of the “Shellmound Building” (roughly identified as “Office 1” on the PDP Build-Out Plan) to be 120 feet and the maximum height of the adjacent building on the Parcel A portion of the “Shellmound Building” (roughly identified as “Residential 3”) to be 175 feet. The proposed height of the R & D building is 162 feet. The second amendment is to change the height of the building identified as “Office 1” from 120 feet to 175 feet. (Note that the portion of the “Shellmound Building” originally designated with a 175-foot height limit is now proposed to be a large open plaza space, with a small 30-foot tall pavilion building. Thus, there would be no overall increase in building volume resulting from this reconfiguration of maximum height designations.)

Condition of Approval I.A.3 stipulates that the maximum height of “Office 1” on the “Shellmound Site” (i.e., Parcel B) shall not exceed 120 feet, under two different phasing options. Therefore, Condition of Approval I.A.3 must be changed from “Maximum height not to exceed 120 feet” to “Maximum height not to exceed 175 feet” under both phasing options.

The necessary modifications to the Conditions of Approval Number III.A.1(d) and Number I.A.3, covering both amendments, are included as Exhibit A to the attached Ordinance amending the PUD/PDP.

In order to approve the above PUD/PDP amendments, the City Council must make findings pursuant to Section 9-7.1004 of the Planning Regulations. Staff believes that these findings can be made as described below:

1. The proposed planned unit development conforms to the adopted General Plan of the City.

**The proposed transfer of construction of ten townhome units from Parcel A (referred to as the “Shellmound Building” in the PUD) to Parcel F (referred to as “Retail Pad #1” in the PUD) conforms to the General Plan Land Use designation of Mixed Use with Residential that encourages housing development. The amendment simply transfers the location of the townhouse units. Additionally, the change in height from 120 feet to 175 feet is also within the height limits of the General Plan Maximum Building Height Map that designates no maximum height at this location.**

2. The proposed planned unit development at its proposed location will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood and community.

**The proposed amendments to the PUD will not change the mixed-use character of the Marketplace PUD and will continue to provide a vibrant urban environment for pedestrians, residents, and the general citizenry.**

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 proposed amendments will have no impact on the suitability of the PUD in terms of access, size of parcel or the relationship to the other uses within the project site or project vicinity.**

4. The location, size, design and operating characteristics of the proposed planned unit development will be substantially compatible with and will not be materially detrimental to neighborhood character, availability of civic facilities, capacity and physical character of surrounding streets, physical safety of the immediate area and the amount of light falling on adjacent buildings and open space.

**The proposed height amendment is within the range of height limits in the original PUD and the transfer of construction of townhomes within the PUD site will not materially impact neighborhood character, availability of civic facilities, capacity of streets, physical safety or the amount of light falling on adjacent buildings and open space.**

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

**The proposed amendments will not have any impact on the aesthetic quality because the change in height is not substantial and transfer of construction of townhomes to a different location does not involve aesthetic considerations. Furthermore, the Final Development Plan approval process for all new proposed buildings will ensure that new construction complies with the City's Design Guidelines.**

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 amendments involving a minor change in height and relocation of some housing units will not adversely impact environmental quality or the value of surrounding properties.**

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 proposed amendments do not have any impact on open space, parking, pedestrian walks, signs, illumination or landscaping.**

#### Development Agreement Modifications:

To effectuate the current proposal, the DA would need to be modified to remove the obligation for the residential development on Parcel A. Specifically, it will involve removal of the Parcel A residential development obligation, and to provide for a monetary contribution of \$20 million to the City as consideration for removing the obligation to provide 18 affordable housing units on Parcel A, and other related amendments as described below. Pursuant to Section 10.2 of the DA, any changes that relate to permitted uses of the property or monetary contributions by the Developer are deemed a "Major Amendment" of the DA and therefore require City Council approval.

During the April 19, 2022 City Council study session, the City Council discussed a potential monetary contribution from the Applicant to the City's Affordable Housing Fund in exchange for removal of the obligation to provide residential units on Parcel A. The City Council designated Mayor Bauters and Vice Mayor Medina as an ad-hoc subcommittee to meet with the Applicant to discuss modifications to the DA, including monetary contributions. At a study session on May 17, 2022, the ad-hoc subcommittee presented a summary of the negotiated modifications to the DA including: (1) remittance of \$20 million to the City's Affordable Housing Fund, inclusive of any affordable housing impact fee, and the timing of the remittance of the funds; (2) commitment from the applicant to support any application to secure affordable housing tax credits; and (3) agreement to pedestrianize Market Drive South of 62nd Street between the hours of 10 a.m. and 9 p.m., seven days a week. The First Major Amendment to the Public Market Development Agreement is included as Exhibit A to the attached Ordinance amending the DA..

As drafted, the DA Amendment reflects the business terms negotiated between the ad-hoc subcommittee and the Applicant. Regarding the \$20 million monetary contribution, the 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. An additional \$10 million is due by June 30, 2023, and the remaining amount would be paid in three equal annual installments on June 30 of 2024, 2025 and 2026. However, if the Applicant requests a Temporary Certificate of Occupancy ("TCO") prior to the payment of all \$20 million, the entire remaining amount becomes due prior to issuance of the TCO. Additionally, if the City needs the funding to support an affordable housing development project at any time after June 30, 2023, the City may request the remittance of the total amount outstanding.

Regarding the pedestrianization of Market Drive, the DA Amendment provides that the Applicant must apply for any necessary permits to effectuate the closure of Market Drive south of 62nd Street to the loading dock for Guitar Center within 90 days of written notice from the City that demolition or construction of affordable housing has commenced at 5890, 5900 or 6150 Christie Avenue (the "Christie Sites"). The DA Amendment also provides that, within 60 days of the expiration of Guitar Center's lease of 5925 Shellmound Street, the pedestrian zone will be extended southward from the Guitar Center loading dock to the easement identified as 59th Street. A preliminary sketch of the pedestrianization of Market Drive has been provided (see Attachment 2).

Regarding letters of support, the DA Amendment provides that, upon the request of the City, the Developer agrees to provide a letter of support to facilitate the City's efforts to secure affordable housing tax credits, state or federal financing, local, regional or state bond monies, or other affordable housing grants or funding programs to provide affordable housing on any portion of the properties located at the Christie Sites. The Developer agrees to offer such letter of support at the Developer's reasonable cost and in a form reasonably acceptable to the Developer.

The DA Amendment provides that all other provisions of the DA remain in effect. Under the terms of the DA, if the Applicant fails to perform any non-monetary obligation of the DA, the City may bring a suit for specific performance, declaratory or injunctive relief, and/or terminate the DA. If the Applicant fails to make any payment required by the DA, the City also has the right to recover damages as well as the aforementioned remedies.

In order to approve the above DA amendment, the City Council must make findings pursuant to Section 9-7.1104 of the Planning Regulations. Staff believes 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 proposed amendments are consistent with the General Plan because the contribution of \$20 million will assist the City in providing affordable housing consistent with the Housing Element of the General Plan, and pedestrianization of Market Drive fulfills the General Plan goal of making Emeryville a walkable city (Goal: T-G-4).**

2. The development agreement is in the public interest.

**The proposed amendments will allow for construction of more affordable housing and creating new and safe routes for pedestrians, both of which are in the public interest.**

## **Environmental Review**

On January 15, 2008, the City Council adopted Resolution No. 08-09, certifying the Final Environmental Impact Report (FEIR) for the Marketplace Redevelopment project as adequate under the California Environmental Quality Act (CEQA). On July 15, 2008, the City Council adopted Resolution No. 08-126, applying the EIR to the Project, and in doing so, the City adopted Findings of Fact Regarding Impacts and Mitigation Measures, a Mitigation Monitoring and Reporting Program for the project, Findings of Fact Concerning Alternatives, and a Statement of Overriding Considerations. The impacts that could not be mitigated to a less than significant level related to traffic and air quality, and were deemed acceptable because the project would advance local plans for the City, create jobs, and generate revenue.

CEQA Section 21166 and its corresponding CEQA Guidelines Section 15162 provide that, once an EIR was been prepared, no subsequent or supplemental EIR shall be required by the lead agency unless: (1) substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a



substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15164(e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record.

Attached to this report is an Environmental Checklist for Marketplace Parcels A, B and F ("Marketplace Checklist") for the current project, which proposes a new final development plan for Parcels A and B, associated Planned Unit Development and Preliminary Development Plan ("PUD/PDP") amendments, and associated Development Agreement ("DA") amendments (see Attachment 3). The Marketplace Checklist more particularly discusses whether there have been substantial changes in the proposed project, or to the circumstances under which the project will be undertaken, or whether new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete, exists and thus preparation of a subsequent EIR is required pursuant to CEQA Guidelines Section 15162. As detailed in the Marketplace Checklist, there have been no substantial changes in the proposed project, or to the circumstances under which the project will be undertaken, and no new information of substantial importance exists which would require preparation of a subsequent EIR. The Marketplace Checklist therefore fulfills the City's CEQA obligations under CEQA Guidelines section 15162 and 15164.

## **FISCAL IMPACT**

None.

## **STAFF COMMUNICATION WITH THE PUBLIC**

The Planning Commission has reviewed the new FDP proposal and the accompanying amendments to the PUD/PDP and the DA at study sessions on October 28, 2021; April 27, 2022; and May 26, 2022. The City Council held study sessions on these proposals on November 2, 2021; April 19, 2022; and May 17, 2022.

## **CONFLICT OF INTEREST**

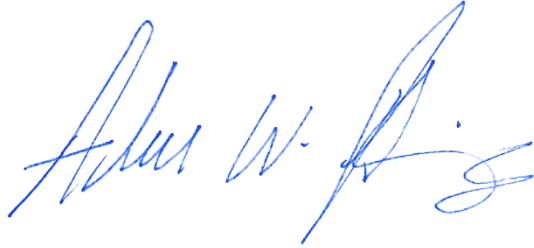
None.

## **CONCLUSION**

After hearing a presentation from staff and receiving public testimony, staff and the Planning Commission recommend adoption the two attached Ordinances approving the proposed amendments to the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP) and the Public Market Project Development Agreement (DA).

**PREPARED BY:** Miroo Desai, Principal Planner

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



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Adam Politzer, Interim City Manager

**ATTACHMENTS:**

- Attachment 1 – 2008 Approved Marketplace PDP Build-Out
- Attachment 2 – Preliminary Plan for Pedestrianization of Market Drive
- Attachment 3 – Marketplace Environmental Checklist, August 2022
  - Attachment 3A – Public Market TDM Plan
  - Attachment 3B – Public Market GHG Assessment
  - Attachment 3C – Public Market Pedestrian Wind Study
- Draft Ordinance for PUD/PDP Amendment, including Exhibit A: Revised Conditions of Approval
- Draft Ordinance for DA Amendment, including Exhibit A: First Major Amendment to the Public Market Development Agreement