

ORDINANCE NO. 19—

Ordinance Of The City Council Of The City Of Emeryville Adopting An Amendment To The Sherwin Williams Planned Unit Development/Preliminary Development Plan (PUD/PDP) To Allow The Removal Of Street Trees On The West Side Of Horton Street (CEQA Determination: Environmental Impact Report for Sherwin Williams Project PUD Certified By City Council on September 6, 2016)

WHEREAS, on September 6, 2016, by Resolution No. 16-122, the City Council certified the Sherwin Williams Project Environmental Impact Report (EIR) as adequate under the California Environmental Quality Act (CEQA), and on October 18, 2016, by Resolution No. 16-147, the City Council applied the Sherwin Williams EIR to the Sherwin Williams Project, made findings as required by CEQA, and adopted mitigation measures for the Project; and

WHEREAS, on November 1, 2016 the Emeryville City Council approved a Planned Unit Development (PUD)/Preliminary Development Plan (PDP) (Ordinance No. 16-006) for LMC Emeryville I Investor LLC ("Applicant") 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-owned 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 Planning Commission approved a Tentative Map (SUBDIV17-001) on May 25, 2017; a Final Development Plan (FDP) for Public Park and Open Space (FDP17-002) on December 14, 2017; and a FDP for four new buildings (FDP17-001) on February 22, 2018; and

WHEREAS, the approved PUD/PDP plan set includes a Landscape Plan on Page 18 that calls for the retention of 11 existing street trees on the west side of Horton Street between Sherwin Avenue and new 46th Street; and

WHEREAS, as part of the PUD/PDP approval, Condition of Approval Number II.D outlines the list of community benefits in order of priority to be provided by the Applicant to obtain development bonus points, and includes utility undergrounding on Horton Street between Park Avenue and the new 46th Street; and

WHEREAS, on April 17, 2018 the City Council held a duly and properly noticed public hearing to consider an amendment to the PUD/PDP to allow the removal of all street trees on the west side of Horton Street to accommodate utility undergrounding, including a joint trench and utility vaults, and continued the item to a future meeting to allow staff time to further consider the design of utility undergrounding that minimizes tree removal; and

WHEREAS, during the ensuing months, further research was conducted to more precisely locate the existing utilities under the roadway, as a result of which it was

determined that there is enough room in the roadway to locate the joint trench, but that the associated utility vaults will still need to be located under the sidewalk; and

WHEREAS, as a result of this new information, two alternatives were developed, both of which would locate the joint trench in the roadway: Alternative A would locate the vaults under the east sidewalk and Alternative B would locate the vaults under the west sidewalk; and

WHEREAS, both alternatives would result in the removal of two street trees on the west side of Horton Street at the north end of the project site because they are in the intersection of the new 46th Street; and both alternatives identify a tree on the west side of Horton Street for removal because it is dead; however, this tree has already been removed by the City; and none of these three trees was shown as an “existing tree” to remain on the Landscape Plan included in the approved PUD/PDP; and two other trees were previously removed by the City; and

WHEREAS, Alternative A would result in the removal of five additional trees on the east side of Horton Street with a total value of \$20,498 and would result in the need to replace portions of the sidewalk on the east side of the street, which is relatively new; while Alternative B would result in the removal of one additional tree on the west side of Horton Street with a value of \$2,018, and the Applicant is required to replace this sidewalk as part of the Project; and

WHEREAS, Alternative B has been selected as the option to pursue because it results in the least number of trees to be removed, and has no impact on the relatively new sidewalk on the east side of Horton Street; and

WHEREAS, the Applicant is required by Condition of Approval IV.A.1.d of Planning Commission Resolution No. FDP17-002 to prepare and implement a tree protection plan for all existing trees to remain along the west side of Horton Street, and to post a bond in an amount equal to replacement value of all trees to be protected and is responsible for replacing any tree that dies during construction; and

WHEREAS, it is now proposed to amend the Sherwin Williams PUD/PDP to replace the Landscape Plan on Page 18 that calls for the retention of 11 existing street trees on the west side of Horton Street between Sherwin Avenue and new 46th Street with a revised Landscape Plan that calls for removal of four trees to accommodate construction of the new 46th Street and utility undergrounding (one of which has previously been removed by the City); and

WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed PUD/PDP Amendment on September 17, 2019; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, relevant records from the Project

file, and the proposed amendment to the Sherwin Williams PUD/PDP, subject to the conditions and requirements set forth in Exhibit A attached to this Ordinance 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 amend the preliminary development plan for the 10.05-acre Sherwin Williams project site approved by Ordinance No. 16-006 (“PDP”) to replace the Landscape Plan on Page 18 that calls for the retention of 11 existing trees on the west side of Horton Street between Sherwin Avenue and new 46th Street with a revised Landscape Plan that calls for the removal of four trees in this location to accommodate construction of 46th Street and utility undergrounding while preserving existing healthy trees and the relatively new sidewalk on the east side of Horton Street (“Amendment”, and further defined in Section Three).

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

In approving the Amendment, as required by Section 9-7.1004(a) of the Planning Regulations, the City Council makes the following findings:

- (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 proposed amendment 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.

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.

Existing street trees to remain and new street trees to be provided along the Horton Street project frontage will be 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.

The Citywide design guidelines that apply and are particularly germane, and with which the proposed amendment is consistent include:

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 45th 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).

In the interest of creating a consistent sidewalk width along the entire Horton Street frontage of the Project site, both north and south of 45th Street, it is not possible to comply with the Green Street sidewalk width along Horton Street; however, there will be a clear pedestrian pathway of at least 7.5 feet and 4 feet for a landscaped area between the pedestrian pathway and curb, consistent with the general Design Guidelines for City streets. This also has the advantage of not eliminating on-street parking on Horton Street, which would occur if the sidewalk were widened to Green Street standards.

- (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 45th 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. The Amendment does not alter this finding.

- (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 Amendment does not alter this finding.

- (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. The Amendment does not alter this finding.

- (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. The Amendment does not alter this finding, and in addition, the Amendment will enhance the Horton

Street frontage by providing new street trees planted in favorable conditions for the new trees to thrive.

- (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 Project reconfigures the required open space by providing a new public park, extension of the Greenway and two other public plazas. The Amendment does not alter this finding.

- (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, a bike share station, bike lockers and a new shuttle running to the West Oakland BART station are proposed to encourage non-vehicular modes of travel. The Amendment does not alter this finding and enhances the environmental quality of the site by providing new street trees and improved soil conditions for existing street trees along Horton Street.

SECTION THREE: ADOPTION OF AMENDMENT TO THE APPROVED 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 approves the amendment to the Sherwin Williams Preliminary Development Plan (PDP) dated September 13, 2016 that was approved by Ordinance No. 16-006 on November 1, 2016, by replacing the Landscape Plan on Page 18 that calls for the retention of 11 existing street trees on the west side of Horton Street between Sherwin Avenue and new 46th Street with a revised Landscape Plan attached as Exhibit B that calls for removal of four trees on the west side of Horton Street to accommodate new 46th Street and utility undergrounding.

SECTION FOUR: CEQA DETERMINATION

The Amendment is covered by the Final Environmental Impact Report for the Sherwin Williams Development Project that was certified by the City Council on September 6, 2016 (Resolution No. 16-122). Since certification of the EIR, there have been no substantial changes in the proposed Project, no substantial changes to the circumstances under which the Project will be undertaken, and no new information of substantial importance, which would require preparation of a subsequent EIR under CEQA Section 21166 and corresponding State CEQA Guidelines Section 15162.

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.

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, September 17, 2019, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, October 1, 2019 by the following vote:

AYES:	<input type="checkbox"/>	<input type="checkbox"/>
NOES:	<input type="checkbox"/>	<input type="checkbox"/>
ABSTAIN:	<input type="checkbox"/>	<input type="checkbox"/>
ABSENT:	<input type="checkbox"/>	<input type="checkbox"/>

MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY

ATTACHMENTS

Exhibit A - Conditions of Approval

Exhibit B - Revised Landscape Plan (Page 18 of Sherwin Williams PUD/PDP Approved Plan Set)