

## RESOLUTION NO. 20- \_\_

### **Resolution Of The City Council Of The City Of Emeryville Disapproving The Planning Commission's Approval Of A Final Development Plan (Resolution No. FDP18-001R) For "Parcel B" Of The Marketplace Redevelopment Project Planned Unit Development (PUD04-12).**

**WHEREAS**, 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"), which included conditions of approval and a Preliminary Development Plan dated April 16, 2008; and

**WHEREAS**, the PUD/PDP involved redevelopment of the existing Marketplace site (including the parcel now referred to as "Parcel B" or APN 49-1556-16) with a phased development consisting of 674 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office and contemplated that the 15-acre Marketplace site would be substantially redeveloped by replacement of surface level parking, realignment of Shellmound Street directly in front of the Marketplace Tower and Public Market buildings, the addition of three new street segments with on-street parking (62nd and 63rd Streets and Market Drive), and the addition of seven new buildings within the site and an enlarged City park; and

**WHEREAS**, on September 25, 2013, City Center Realty Partners, LLC ("Applicant") filed a Final Development Plan application for construction of a parking garage with ground floor retail on Parcel B, and filed an updated application on November 17, 2015; and

**WHEREAS**, on December 1, 2015, the City Council adopted Ordinance No. 15-010, approving a Development Agreement among the City of Emeryville, Applicant, and AvalonBay Communities, Inc ("Development Agreement"), with the ordinance effective on January 1, 2016, and the Development Agreement effective on January 13, 2016; and

**WHEREAS**, on June 23, 2016, at a duly held and properly noticed public hearing, the Planning Commission adopted Resolution No. FDP15-001, approving Final Development Plan 15-001 for Parcel B that included a four-story building with approximately 20,000 square feet of ground floor retail space and 300 parking spaces, and a stand-alone single story, 2,280 square foot commercial pavilion with a plaza between the garage building and the pavilion ("FDP15-001"); and

**WHEREAS**, building permits B2017-0029 and B2017-0030 for the FDP15-001 Project ("Building Permits") were issued on January 12, 2018; however, no work was done under these permits, and Applicant submitted a letter withdrawing the building permits on October 10, 2018, and voluntarily relinquished their rights under the Building Permits and Resolution No. FDP15-001; and

**WHEREAS**, on November 28, 2018, Applicant filed a new Final Development Plan application for construction of a 113-foot tall, 8-story building with 14,000 square feet of

rentable retail space, 150,000 square feet of rentable office/laboratory space, and a parking garage with 565 spaces (“Appealed FDP”); and

**WHEREAS**, the Planning Commission reviewed the Appealed FDP at study session on December 13, 2018; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on January 24, 2019, and adopted CPC Resolution No. FDP18-001, approving the Appealed FDP; and

**WHEREAS**, in a letter dated February 8, 2019, Wareham Development appealed CPC Resolution No. FDP18-001 to the City Council (“February Appeal”); and

**WHEREAS**, on March 19, 2019, pursuant to Emeryville Municipal Code section 9-7.1405(b)(3), the City Council reviewed the February Appeal, and staff report with attachments, and remanded the appeal to the Planning Commission with instructions to consider the issues raised in the February Appeal and to hold a new public hearing on the Appealed FDP (Resolution No. 19-29); and

**WHEREAS**, on April 25, 2019, at approximately 4:30 p.m., Wareham Development submitted a letter dated April 24, 2019, with several attachments, which included drawings and suggestions of how the Appealed FDP should be redesigned; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on April 25, 2019 to solicit public comments to reconsider the Appealed FDP pursuant to the City Council’s direction, and heard testimony from both Applicant and Wareham Development; and

**WHEREAS**, the Planning Commission closed the public hearing held on April 25, 2019 and continued deliberation to May 14, 2019 to allow the Planning Commission time to fully consider all evidence received on the Appealed FDP, including evidence contained in the February Appeal and the letter dated April 24, 2019 from Wareham Development; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on May 14, 2019 to solicit public comments to reconsider the Appealed FDP pursuant to the City Council’s direction, heard testimony from both Applicant and Wareham Development, and unanimously approved the Appealed FDP again; and

**WHEREAS**, the Planning Commission’s May 14, 2019 decision was called for review by the City Council on May 21, 2019 and also appealed by Wareham Development on May 29, 2019 (collectively, the “May Appeal”); and

**WHEREAS**, on October 1, 2019, the City Council considered the May Appeal and then voted 4-1 (Council Member Donahue voted no) to set November 5, 2019 as the date for public hearing on the May Appeal (Resolution No. 19-141); and

**WHEREAS**, at the November 5, 2019 City Council meeting, the Applicant submitted an alternative design to the Appealed FDP (referred to herein as the “Project”), which consists of a nine-story building with approximately 15,800 square feet of rentable retail space, 150,000 square feet of office/laboratory space, and 500 parking spaces; and

**WHEREAS**, after closing the public hearing at the November 5, 2019 City Council meeting, pursuant to Emeryville Municipal Code Section 9-7.1405(d)(1), the City Council directed the Planning Commission to render a supplemental report to the City Council regarding the Project; and

**WHEREAS**, on December 12, 2019, the Planning Commission considered the Project and adopted Planning Commission Resolution No. FDP18-001A, rendering a supplemental report, including a recommendation that the City Council approve the Project with additional conditions of approval; and

**WHEREAS**, the City Council held a duly and properly noticed public hearing on January 21, 2020 to solicit public comments to consider the Project; and

**WHEREAS**, the City Council has reviewed and considered the staff report, and attachments thereto, the supplemental report from the Planning Commission (Resolution No. FDP18-001A), all public testimony both written and oral, the administrative record submitted to the City Council pursuant to Emeryville Municipal Code Section 9-7.1405(a) and the applicable provisions of the Emeryville Planning Regulations (“the Administrative Record”); now, therefore, be it

**RESOLVED**, that the City Council hereby determines that this Resolution is not subject to the California Environmental Quality Act (CEQA) because, pursuant to California Public Resources Code § 21080(b)(5), CEQA does not apply to projects which a public agency rejects or disapproves; and be it further

**RESOLVED**, that the City Council, based on substantial evidence in the Administrative Record, makes the following findings required by Emeryville Municipal Code Section 9-7.1004(b):

**Section 9-7.1004(b)(1). The final development plan substantially conforms to the preliminary development plan.**

The final development plan does not substantially conform to the preliminary development plan because \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Section 9-7.1004(b)(2).** Changes and conditions of approval specified by the City Council in its approval of the preliminary development plan have been met.

The Project has not met the applicable conditions of approval for the PUD/PDP as approved by the City Council. Specifically, \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

and be it further

**RESOLVED**, that in the matter of the May Appeal, the City Council hereby takes final action, and disapproves the Planning Commission's approval of a Final Development Plan (Resolution No. FDP18-001R) for "Parcel B" of the Marketplace Redevelopment Project Planned Unit Development (PUD04-12).

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, January 21, 2020 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:

APPROVED AS TO FORM:



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

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