



# City of San Leandro

Meeting Date: July 1, 2021

## Staff Report

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**File Number:** 21-339

**Agenda Section:** MINUTES

**Agenda Number:** 6. C.

**TO:** Planning Commission and Board of Zoning Adjustments

**FROM:** Fran Robustelli  
City Manager

**BY:** Tom Liao  
Community Development Director and  
Andrew Mogensen  
Planning Manager

**FINANCE REVIEW:** Not Applicable

**TITLE:** STAFF REPORT for the First Amendment to the Development Agreement for 2436 Washington Avenue - 2450 Washington Avenue Development Project (PLN2009-00006 and PLN21-0001); APN 077D-1410-025-00; Wm. Mathews, Inc. (applicant).

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### SUMMARY AND RECOMMENDATIONS

In 2011, the City Council approved a 66-unit residential rental apartment project at 2436 Washington Avenue through a Development Agreement with a 10-year term. The approval included an option for a five-year extension with City Council approval. The applicant is requesting to amend and extend the Development Agreement for an additional five-year term.

Staff recommends that the Planning Commission adopt Resolution 2021-006, recommending City Council approval of the proposed Development Agreement to extend the term by an additional five (5) years, to expire on January 4, 2027.

### BACKGROUND AND DISCUSSION

In October 2011, the Planning Commission adopted a Resolution recommending that the City Council approve the proposed 66-unit residential rental apartment project at 2436 Washington Avenue commonly known as 2450 Washington Avenue Development Project ("Project") APN 077D-1410-025-00, PLN2009-00006 and PLN21-0001, subject to the Recommended Conditions of Approval. In November 2011 and December 2011, the City Council adopted Resolution No. 2011-192, Resolution No. 2011-193, and Ordinance No. 2011-013 approving the Project, which included approval of a Vesting Tentative Tract Map 8003, a General Plan Map Amendment from Office to High Density Residential, a Rezone from P (AU)-Professional with Assembly Use Overlay to RM-1800(PD)-Residential Multi-Family with Planned Development Overlay, a Development Agreement, an Initial Study, a Mitigated Negative Declaration and a

Mitigation Monitoring Reporting Program, to build a new residential development consisting of 66 residential rental apartment units.

The approved Development Agreement has an initial ten (10) year term, expiring on January 4, 2022, which may be extended for one additional five (5) year term. This would extend the life of the Development Agreement, as well as the Vesting Tentative Tract Map, to January 4, 2027.

The approved Development Agreement contemplated the Project initially as a rental housing project, and Section 2.10 of the Development Agreement prohibits the Applicant from requesting approval for conversion to a for-sale condominium project. This provision may only be amended through approval by the City Council.

The Developer, William Mathew Brooks of Wm. Mathews, Inc. (the "Applicant"), submitted an application to amend the Development Agreement in two respects: (1) to exercise the five (5) year term extension; and (2) to modify the Development Agreement by deleting Section 2.10. Pursuant to the Development Agreement, the Planning Commission must review the five-year term extension amendment prior to City Council review and approval.

The subject site comprises of one parcel that is approximately 124,469 square feet (2.85 acres). It is located on the east side of Washington Avenue at the north corner of San Leandro Boulevard. Commercial and residential sites on Washington Avenue are developed with residential uses including a mobile home park to the south and east (Trailer Haven and San Leandro Court), single-family residential to the north (Sandpiper Condominiums), and auto oriented commercial/industrial businesses to the west across Washington Avenue. The site was formerly part of the Singer-Friden business machine, calculator, circuit board, cash register, and sewing machine manufacturing plant from approximately 1968 to 1976.

The Applicant proposes to amend the Development Agreement previously approved by the City Council on December 5, 2011 to exercise the five (5) year extension as allowed by Section 1.3.2 of the Development Agreement, and to delete Section 2.10 prohibiting the Applicant from requesting approval for conversion to a for-sale condominium project. The Planning Commission is required to review the possible five year extension before this is brought before the City Council.

Pursuant to Government Code Section 65868, a development agreement may be amended by mutual consent of the parties to the agreement. Notice of intention to amend any portion of the agreement shall be given in the manner provided by Government Code Section 65867, and an amendment to an agreement shall be adopted by ordinance, and the City Council must find that the amended Development Agreement is in compliance with the City General Plan, as required by Government Code Section 65867.5.

## **ANALYSIS**

### Five (5) Year Extension and Vesting Tentative Map

The Vesting Tentative Map was approved and adopted by City Council in November 2011. Government Code Section 66452.6 provides that a vesting tentative map on property subject to a

development agreement may be extended for the period of time provided by the development agreement, but not beyond the duration of the development agreement. The proposed amendment to the Development Agreement to exercise the five (5) year extension to the term of the Development Agreement would extend the life of the Vesting Tentative Map to January 2027. Currently, the Development Agreement is set to expire on January 4, 2022, which would also be the time of expiration of the Vesting Tentative Map. In order to extend the time for this Project, including the viability of the Vesting Tentative Map, the five (5) year extension must be exercised.

## **PLANNING COMMISSION ACTION**

Pursuant to Development Agreement section 1.3.2, the Planning Commission must approve the five-year extension to the life of the Development Agreement.

Staff recommends that the Planning Commission Adopt Resolution 2021-006.

Note that there are two other proposed amendments not being considered by the Planning Commission: 1) to modify the Development Agreement to conversion to a for-sale condominium project; and 2) to incorporate the City's Inclusionary Housing Ordinance into the Development Agreement. These provisions do not require Planning Commission review or recommendation before going to the City Council for approval.

## **ENVIRONMENTAL REVIEW**

The proposed ordinance to approve the first amendment to the Development Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) State CEQA Guidelines because it can be seen with certainty that there is no possibility that the amendment may have a significant effect on the environment. Further, in 2011 the City prepared an Initial Study, a Mitigated Negative Declaration and a Mitigation Monitoring Reporting Program consistent with the CEQA, Public Resources Code, Sections 21000, et seq. and CEQA Guidelines, which was approved by City Council on November 21, 2011 by Resolution No. 2011-192.

## **PUBLIC OUTREACH**

This item received standard noticing for the July 1, 2021 Planning Commission hearing, including a legal advertisement in the East Bay Times Daily Review newspaper, the posting of notices at City Hall and on the property, and mailing notification to property owners within 500 feet of the subject property.

## **LEGAL ANALYSIS**

The City Attorney's Office drafted the proposed resolution and proposed First Amendment to the Development Agreement. The legal discussion can be found in the narrative above.

## **ATTACHMENT(S)**

- 2012 Development Agreement

- Proposed First Amendment to the Development Agreement (Exhibit A)
- Planning Commission Resolution 2021-006

**PREPARED BY:**

Anjana Mepani, AICP  
Senior Planner, Planning Services Division

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**City of San Leandro Planning Commission**

**RESOLUTION NO. 2021-006**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF SAN LEANDRO**

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**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL APPROVE  
THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE  
RESIDENTIAL DEVELOPMENT PROJECT LOCATED AT 2436  
WASHINGTON AVENUE - 2450 WASHINGTON AVENUE DEVELOPMENT  
PROJECT  
PLN20009-00006 and PLN21-0001**

**WHEREAS**, to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864, et seq. (the “Development Agreement Statute”), which authorizes cities to enter into agreements for the development of real property with any person having legal or equitable interest in such property in order to establish certain development rights in such property; and

**WHEREAS**, William Mathew Brooks, of Wm. Mathews, Inc. (the “Applicant”) submitted applications for a two-story 66-unit residential development project (PLN2009-00006) (the “Project”) consisting of 48 two-bedroom units and 18 one-bedroom units, with a proposed density of 23.2 dwelling units per acre, to be located on an approximately 2.85-acre site at 2436 Washington Avenue, commonly known as the 2450 Washington Avenue Development Project, known as Assessor’s Parcel Number 077D-1410-25-00 (the “Property”); and

**WHEREAS**, the City Council on November 21, 2011 had a first reading to approve the Project, and subsequently on December 5, 2011 approved the Project, adopted the Initial Study and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program associated with the Project, along with the Vesting Tentative Map, Tract 8003, a General Plan Map Amendment from Office to High Density Residential, a Rezone from P (AU)-Professional with Assembly Use Overlay to RM-1800(PD)-Residential Multi-Family with Planned Development Overlay, a Development Agreement, and approved a Development Agreement for the Project; and

**WHEREAS**, the Development Agreement has an initial term of ten (10) years, which expires on January 4, 2022, and which may be extended by one five (5) year term upon approval by the City of San Leandro Planning Commission; and

**WHEREAS**, the Applicant on January 11, 2021 submitted an application to amend the Development Agreement in two ways: to exercise the five (5) year term extension, and to modify the Development Agreement by deleting Section 2.10 to allow the Project to be operated as a rental and/or for sale project; and

**WHEREAS**, the Vesting Tentative Map prepared for the Project has a lifespan dependent on the Development Agreement and remains viable throughout the initial term and five (5) year extension of the term of the Development Agreement; and

**WHEREAS**, City prepared an Initial Study, Mitigated Negative Declaration and a Mitigation Monitoring Reporting Program consistent with the California Environmental Quality Act, Public Resources Code, Sections 21000, et seq. (CEQA) and CEQA Guidelines approved on by Council November 21, 2011 by Resolution No. 2011-192; and

**WHEREAS**, the First Amendment to the Development Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) State CEQA Guidelines; and

**WHEREAS**, the proposed First Amendment is consistent with the approved subdivision and City requirements and does not alter the design or layout of the subdivision or result in any land use changes to the subdivision; and

**WHEREAS**, the Planning Commission, pursuant to the requirements of Development Agreement Section 1.3.2, reviewed and approved the staff report and resolution, and recommended approval of the five (5) year term extension on July 1, 2021 at a duly noticed public hearing, at which time all interested parties had the opportunity to be heard.

**NOW, THEREFORE THE PLANNING COMMISSION FOR THE CITY OF SAN LEANDRO RESOLVES THAT:** The above recitals are true and correct and are made a part of this resolution.

**BE IT FURTHER RESOLVED THAT**, the Planning Commission of the City of San Leandro does hereby make the following findings and determinations regarding the proposed approval of the First Amendment to the Development Agreement, as shown in attached Exhibit A and incorporated herein by reference, based on the following findings and considering the staff report, and the whole of the record related to the Project:

1. The Planning Commission, having reviewed and considered the draft First Amendment to the Development Agreement, the Initial Study and Mitigated Negative Declaration prepared pursuant to CEQA in 2011 and the CEQA exemption, comments received during the public review period,

and the City's written responses to comments prior to acting on the Project finds that the First Amendment to the Development Agreement is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) State CEQA Guidelines.

The Planning Commission further finds that on the basis of the whole record before it, there is no substantial evidence that the First Amendment to the Development Agreement will have a significant effect on the environment beyond those identified by the Initial Study and Mitigated Negative Declaration, approved by the City Council on November 21, 2011 by Resolution No. 2011-192 and is exempt from the requirements of the California Environmental Quality Act (CEQA) under Section 15061(b)(3) State CEQA Guidelines.

2. The Planning Commission further finds that the First Amendment to the Development Agreement is drafted in compliance with the requirements of the Development Agreement, the Subdivision Map Act, California Government Code Section 65580, et seq., San Leandro Zoning Code Chapter 6.04, and all other applicable federal, state, and local laws. The Planning Commission finds that the First Amendment to the Development Agreement is consistent with the City General Plan. The Planning Commission finds that First Amendment to the Development Agreement with regard to the five year term extension is complete and adequate and reflects the City's independent judgement and analysis of the Applicant's Application to Amend the Development Agreement in the context of the Project.

**PASSED, APPROVED, AND ADOPTED**, on this 1<sup>st</sup> day of July, 2021 by the following vote:

**AYES: 6 – (Boldt, Breslin, Mendoza, Santos, Solis, Tejada)**

**NOES:**

**ABSENT: 1 – (Pon)**

**ABSTAIN:**

*Dylan M. Boldt*

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Dylan Boldt,  
Chair of the Board of Zoning Adjustments

**ATTEST:**

*AJM*

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Andrew J. Mogensen, AICP  
Secretary to the Board of Zoning Adjustments