



## Legislation Text

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**File #:** 21-339, **Version:** 1

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**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).

### **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:**

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