

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: November 19, 2012
Reviewed by: BP

SUBJECT: Referendum against Ordinance No. 2012-04 Approving University Village Mixed Use Project Development Agreement

REPORT BY: Jeff Bond, Community Development Director

SUMMARY

The 6.3-acre University Village project site is located at the intersection of Monroe Street and San Pablo Avenue. The project includes a grocery store, senior housing, and retail uses. In July 2012, the City Council approved a series of policy-level actions associated with the project including a development agreement. Following approval, a referendum petition was filed with the City Clerk to repeal the ordinance approving the development agreement. The purpose of the City Council meeting is for the Council to either repeal the ordinance approving the development agreement or submit the ordinance to the voters.

STAFF RECOMMENDATION

That the Council:

- a) Introduce and approve for First Reading Ordinance No. 2012-07, Repealing Ordinance No. 2012-04, or
- b) Direct staff to return to Council with a prepared Resolution to submit Ordinance No. 2012-04 to the voters of the City of Albany and that the Council identify the preferred future election date.

BACKGROUND

In July 2012, the City Council approved a series of policy-level actions associated with the University Village Mixed Use project including an environmental impact report, zoning map amendments, zoning text amendments, planned unit development, density bonus, and development agreement. As detailed in the attached report from the City Clerk, a referendum petition seeking to repeal the ordinance approving the development agreement has been submitted to the City Clerk.

A development agreement is a contract that is voluntarily entered into by a developer and a municipality. A wide range of matters can be incorporated into a development agreement

that is not normally incorporated into a conventional planning approval. Pursuant to California law, any development agreement must be approved by ordinance.

The Development Agreement that was prepared for the UC Village project functions as a contract between the City and the University of California (or its subsequent development partners). The key elements of the development agreement not referenced in other approvals include:

- Recital I – Refers to a commitment from the University to Albany Little League to use proceeds from the project to pay for relocation of the fields if relocation is triggered by a future UC Berkeley project.
- Recital J – Refers to a commitment from the University to require project developers to comply with the University’s general conditions pertaining to prevailing wages, payroll records and apprentices, as well as certain prequalification and binding arbitration requirements.
- Section 2.4 – The agreement locks in City fees at level in place when the agreement becomes effective.
- Section 2.5 (Inclusionary Housing) - Confirms that the senior housing component is not subject to the City’s inclusionary housing requirements and provides assurance that the City shall not impose an inclusionary housing in-lieu fee on the Project so long as the residential units in the Project remain all-rental.
- Section 5.4 (Albany Preference) – Provides that the operator of the senior housing will provide priority for Albany residents on at least 10% of the housing units.

The development agreement also included provisions that also are referenced in other approvals. Thus, the following elements in the development agreement remain in effect:

- Section 4.3 (Parking) – The agreement references the approved density bonus application to reduce senior parking to 0.6 spaces per unit.
- Section 4.4 (Parkland Dedication) - The agreement references approved Municipal Code amendments to reduce parkland dedication requirements for senior housing.
- Section 11 (Project Definition) – References the Resolution approving the Planned Unit Development standards, which includes a height limit of four stories, measured 52 feet from ground level finished floor to top of structure.

DISCUSSION AND ANALYSIS

As a result of the filing of the referendum petition with the City Clerk, the development agreement has not been signed and the terms of the agreement are not in effect. The only way to bring the terms of the current form of the development agreement into effect would be for an election to be scheduled, with the outcome of the election being a majority of the voters rejecting the referendum. The City Clerk's report provides details on the process and cost of such an election.

Alternatives to bringing the matter to the voters include:

1. The City Council could repeal the ordinance as requested by the referendum petition. This would have the effect of eliminating the development agreement from the package of project approvals;
2. The City Council could repeal the ordinance and authorize staff to enter into negotiations for a new and substantially different development agreement between the City and the applicant;
3. The City Council could repeal the ordinance, wait at least one year, and introduce a new ordinance authorizing a substantially similar development agreement.

In all three scenarios, the other project approvals are in effect and will remain in place, subject to resolution of the two pending legal challenges alleging violations of the California Environmental Quality Act (CEQA).

At this time, UC Berkeley representatives support repeal of the ordinance approving the development agreement. In addition, they do not propose to negotiate a new development agreement. Staff has been in contact with labor union representatives and the Albany Little League regarding the implications of the referendum on the development agreement. Labor unions are in direct discussions with UC Berkeley staff regarding other mechanisms to ensure their objectives are adequately addressed, and have not requested that the development agreement be placed before the voters. Albany Little League has indicated that based on correspondence and conversation with UC Berkeley representatives, they are comfortable with the project moving forward without the development agreement. Therefore, if the Council were to repeal the development agreement ordinance, City staff would not be seeking authorization to negotiate a new development agreement at this time.

Implications of Withdrawal of Whole Foods

Several months ago, Whole Foods announced that they intended to explore other locations in the area for a new store. Because the development agreement, as well as the other project approvals, did not specify a particular grocery store operator, the Whole Foods decision does not have any implication on the development agreement or other City approvals. UC Berkeley staff has indicated their intent to begin the process to identify a replacement grocery store operator.

SUSTAINABILITY IMPACT

The City's sustainable development policies are not impacted by the development agreement.

FINANCIAL IMPACT

The development agreement had no impact on the annual revenues and annual cost to the City of providing services to the project. Without the development agreement, the City has flexibility of incorporating an update in development impact fees that could be applied to the project. Any increase in fees, however, is subject to state law limitations that fees be applied to all development applications and be reasonably-related to the impacts of a project on the City's capital infrastructure.

NEXT STEPS

If the Council repeals the development agreement ordinance, staff believes that once the CEQA litigation is resolved, the project will move forward in a phased manner. The major determining factor for the timing and nature of the development of the project will be local economic conditions. It is probable that the project will be phased, with the senior housing component moving forward in the near term. The grocery store and other retail would follow once a replacement grocer is identified and the developer reaches an agreement with the University.

In the meantime, it is permissible for a developer to begin the application process for subsequent approvals while CEQA litigation is being resolved. Future City review includes a subdivision of the University's property, design review of the proposed buildings, and if necessary, use permits for certain types of uses. One of the key policy issues that will be resolved during the subdivision process is the review and final decision on detailed infrastructure plans, including bicycle, pedestrian, transit, and automobile access to the site. A determination of the final design of a safe crossing of San Pablo Avenue and the feasibility of a cycle-track along San Pablo Avenue would be part of the subdivision process.

Attachments

1. Ordinance 2012-04
2. Development Agreement as Approved by the City Council July 16, 2012