



## Agenda Report

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Item #: 24-230

Meeting Date: 06/04/2024

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**TITLE: FIRST READING OF ORDINANCES APPROVING DEVELOPMENT AGREEMENT (DA-20-02), REZONE (R-20-01), AND SPECIFIC PLAN (SP-20-01), AND ADOPTION OF RESOLUTION AMENDING CERTAIN CONDITIONS OF APPROVAL FOR THE ONE METRO WEST PROJECT LOCATED AT 1683 SUNFLOWER AVENUE**

**DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION**

**PRESENTED BY: AMBER GREGG, CONTRACT PLANNER**

**CONTACT INFORMATION: AMBER GREGG CONTRACT PLANNER, 714-754-5617**

### **RECOMMENDATION:**

Staff recommends the City Council:

1. Find that the proposed amendments are in substantial conformance with the Final Environmental Impact Report (EIR) for the One Metro West project (State Clearing House No. 2019050014), including a mitigation monitoring program and statement of overriding considerations, which was certified by the City Council on May 4, 2021, and that no further environmental review under CEQA is required pursuant to CEQA Guidelines Section 15162.
2. Introduce for first reading, by title only, Ordinance No. 2024-XX approving Development Agreement 20-02, modifying payment of impact fees and community benefits funding from one year to five years and clarifying the Agreement's effective date.
3. Introduce for first reading, by title only, Ordinance No. 2024-XX approving Rezone 20-01.
4. Introduce for first reading, by title only, Ordinance No. 2024-XX approving Specific Plan 20-01.
5. Adopt Resolution 2024-XX amending certain conditions of approval of Resolution 2021-55 regarding the artwork on Building A along the I-405 Freeway.

### **BACKGROUND:**

The subject property, known as One Metro West, is 15.23 acres in size and is located at 1683 Sunflower Avenue. The site is bounded by Sunflower Avenue to the north, the South Coast Collection (SOCO) retail center to the east, the Interstate 405 Freeway (I-405 Freeway) to the south, and industrial and logistics uses to the west (zoned Planned Development Industrial). The project site is currently occupied by office, warehouse, and manufacturing uses within an approximately 345,000-square-foot, one-story industrial building.

**Exhibit 1 – One Metro West Project Vicinity Map**

On July 20, 2021, the City Council approved the “One Metro West” mixed-use development which includes 1,057 apartment units, 6,000 square feet of ground floor retail space, a 25,000 square-foot office building, 1.5-acres of publicly accessible open space, and various offsite improvements along Sunflower Avenue (e.g., new bicycle lanes and landscaped medians).

When the Council approved the final project entitlements, the project was conditioned on complying with Article 22, Chapter IX of the Zoning Code. Article 22, “An Ordinance to give the People of Costa Mesa Control of Their Future,” was added to the Zoning Code by “Measure Y,” which was approved by the voters in 2016. Article 22 requires a vote of the Costa Mesa electorate to approve major changes in allowable land use, as defined. A stated intent of Measure Y is to allow maximum public participation in major land use and zoning changes proposed in Costa Mesa.

The specific project components that previously required a vote of the electorate included the request for a General Plan Amendment (GPA), rezone, specific plan, and because more than 40 residential units were proposed (Costa Mesa Municipal Code Section 13-200.102.) In addition, the project was not subject to any of the listed exceptions to Article 22 at the time of City Council approval in 2021 (CMMC Section 13-200.106). Pursuant to Article 22, the development was conditionally approved by the City Council such that the project entitlements would not become effective until approved by the voters.

In 2022, following City Council approval of the project entitlements, Measure K was passed by the voters. Measure K amended Article 22 to allow for the development of housing in specific commercial and

industrial areas while keeping residential neighborhoods intact and revitalizing commercial corridors. Similar to the surrounding properties located north of the 405 freeway, the One Metro West project is located within a mapped area that is exempted from Article 22's voter approval requirement (CMMC Section 13-200.106 G). However, the ordinances implementing the project were conditioned to not be effective until approval by a vote of the electorate. Therefore, since a vote of the electorate has not occurred, the ordinances implementing the One Metro West development must be adopted as revised to be effective.

The approved project components and entitlements include:

- **Final Environmental Impact Report** (State Clearinghouse No. 2019050014);
- **General Plan Amendment (GP-20-01)**: Amending the Land Use Element to change the General Plan land use designation of the property from Industrial Park (IP) to High Density Residential (HDR) to allow residential uses and establish a site-specific maximum density of 80 dwelling units (du) per acre and site-specific maximum building height of 98 feet;
- **Rezone (R-20-01)**: When in effect, changing the zone of the project site from Industrial Park (MP) to Planned Development Residential – High Density (PDR-HD) to allow for a mixed-use development with residential and complementary commercial uses;
- **Specific Plan (SP-20-01)**: When in effect, establishing site-specific zoning regulations such as development standards and design guidelines;
- **Master Plan (PA-19-19)**: When in effect, the project site plans and architectural details including floor plans, building elevations, landscaping and renderings/streetscape views;
- **Tentative Tract Map No. 19015 (T-19-01)**: When in effect, subdividing the site into five parcels including establishing the right to a future airspace subdivision for condominium purposes as well as dedication of an easement to the City for public access and use of the 1.5-acre open space area; and
- **Development Agreement (DA-20-02)**: When in effect, agreement between the applicant and the City pursuant to California Government Code Sections 65864, et seq. that guarantees project approvals for a period of 25 years from its effective date, in exchange for public benefits including, but not limited to, 106 affordable housing units that will remain affordable for no less than 40 years. The required project affordable housing units include 67 very-low income units and 39 low-income units.

### ***Requested Amendments***

On December 4, 2023, the applicant's representative, Brent Stoll of Rose Equities, submitted a letter requesting several modifications. The proposed amendments do not modify the development plans. Specifically, the applicant is requesting to amend the following:

- Development Agreement: Amend the timing of payment of impact fees and community benefits funding;
- Ordinance Modifications: Modify the Ordinances to be consistent with Article 22 by reflecting the project effective date as the date of the City Council's adoption of the attached Ordinances; and



- Project Condition of Modifications: Amend certain project conditions specific to the required timing of the artwork design submittal to the City and the final approval body for the proposed artwork (Conditions 9 and 66 of Resolution 2021-55).

Refer to the applicant's letter in Attachment 5 for a detailed description of the applicant's requests.

### ***Public Comments***

Three comment letters were received prior to the Planning Commission meeting. The letters expressed concerns about the effective date of the applications, the timing of the project, traffic congestion, density, height, noise, light, air quality, and costs to the City. At the Planning Commission meeting, four individuals spoke in opposition of the project. In addition to the previously noted concerns, speakers commented on the terms of the development agreement.

### ***Planning Commission Recommendation***

On May 13, 2024, the Planning Commission considered the request and reviewed the proposed modifications. After considering staff's presentation, the applicant's presentation and public comments, the Planning Commission deliberated and voted five to one to recommend that the City Council:

1. Introduce for first reading an ordinance amending Development Agreement DA-20-02 regarding the timing of payment for impact fees and community benefit funds, which would become effective upon adoption;
2. Introduce for first reading project Ordinances clarifying the project's effective approval date contained in Rezone 20-01 and Specific Plan 20-01; and
3. Approving modifications to City Council Resolution 2021-55 clarifying certain conditions of approval regarding the artwork on Building A along the I-405 Freeway.

Regarding the requested modifications to the conditions or approval pertaining to the art installation, the Planning Commission did not support the Arts Commission acting as the final reviewing body, and they did not support the removal of the vertical landscaping requirement. Additional information regarding the Planning Commission's recommendation is provided later in this report. Concerning the Development Agreement, the Planning Commission questioned the three percent (3%) interest rate, noting they felt it was low, but ultimately deferred to the City Council to determine the appropriate financial aspects of the project. The May 13, 2024, Planning Commission report and video are linked below:

May 13, 2024, Planning Commission Staff Report (also provided as Attachment 10)

<https://costamesa.legistar.com/View.ashx?M=F&ID=12920298&GUID=9D328997-1746-430C-9978-B2BABB3790F9>

May 13, 2024, Planning Commission Video

[https://costamesa.granicus.com/player/clip/4129?view\\_id=14&redirect=true](https://costamesa.granicus.com/player/clip/4129?view_id=14&redirect=true)

**ANALYSIS:*****Development Agreement Amendment***

The One Metro West Development Agreement provides for a number of public benefits for the City, including but not limited to open space, a community center, affordable housing, and funding. The applicant is committed to providing these benefits; however, is requesting modifications to the timing of payment to certain required fees. Currently, the Development Agreement requires all fees (\$16,532,789) to be paid in Phase I - at the time of issuance of the first building permit.

The applicant has stated the resulting upfront costs are significant and challenging and instead proposes to pay two of the required fees (Development Impact fees and Economic Recovery and Community Enhancement) in two installments, with interest, over a five-year period (see the below Table 1 and Table 2). The Public Safety fee and Community Infrastructure fee will continue to be paid with the first building permit.

**TABLE 1 – Approved and Proposed Development Agreement Language  
Requested to be Modified**

APPROVED DEVELOPMENT AGREEMENT	PROPOSED DEVELOPMENT AGREEMENT
<b>Development Impact Fees (DIF):</b>  All DIFs paid with issuance of the first building permit: <ul style="list-style-type: none"> <li>• Park Fee: \$5,285,000</li> <li>• Open Space Fee: \$3,068,460</li> <li>• Traffic Impact Fee: \$1,598,000</li> <li>• Fire Fee: \$504,783</li> <li>• Drainage Fee: \$76,546</li> </ul> <b>Total DIF = \$10,532,789</b>	<b>Development Impact Fees (DIF) – REQUEST CHANGE:</b>  <u>Two Payment Installments plus 3% interest rate.</u> <u>First payment received with the issuance of the first building permit (Year 1), second and final payment received Year 5.</u> <u>Total DIF = \$11,403,652 (includes 3% interest rate)</u>
<b>Funding for Economic Recovery and Community Enhancement:</b>  \$3 million for projects related to economic sustainability and recovery Paid prior to issuance of first building permit	<b>Funding for Economic Recovery and Community Enhancement – REQUEST CHANGE:</b>  <u>One Payment received in Year 5 plus 3% interest rate.</u> <u>Total = \$3,477,822 (includes 3% interest rate)</u>

The City's Finance Department has reviewed the applicant's requested payment modifications and determined that the requested five-year payment plan with a three percent (3%) interest rate retains the fund's "net present value" by recovering the potential interest and/or inflation monetary reductions that may result by the requested payment delays. The result is a total payment of \$17,881,474 by the end of the five-year term. If the proposed payment plan is approved, the resulting payments are as follows:

**TABLE 2 – Proposed Fee Total**

FEE TYPE	TOTAL FEES DUE (Per DA)	YEAR FEE PAID		TOTAL FEES (Paid at the end of 5 years)
		YEAR 1	YEAR 5** Includes 3% Interest	
Public Safety*	\$2,000,000	\$2,000,000	-	\$2,000,000
Comm Infrastructure*	\$1,000,000	\$1,000,000	-	\$1,000,000
Economic Recovery	\$3,000,000	-	\$3,477,822	\$3,477,822
Dev Impact	\$10,532,789	\$5,065,089	\$6,338,563	\$11,403,652
TOTAL	\$16,532,789	\$8,065,089	\$9,816,385	\$17,881,474

\*Fee and timing of payment are unchanged from the Original Development Agreement.

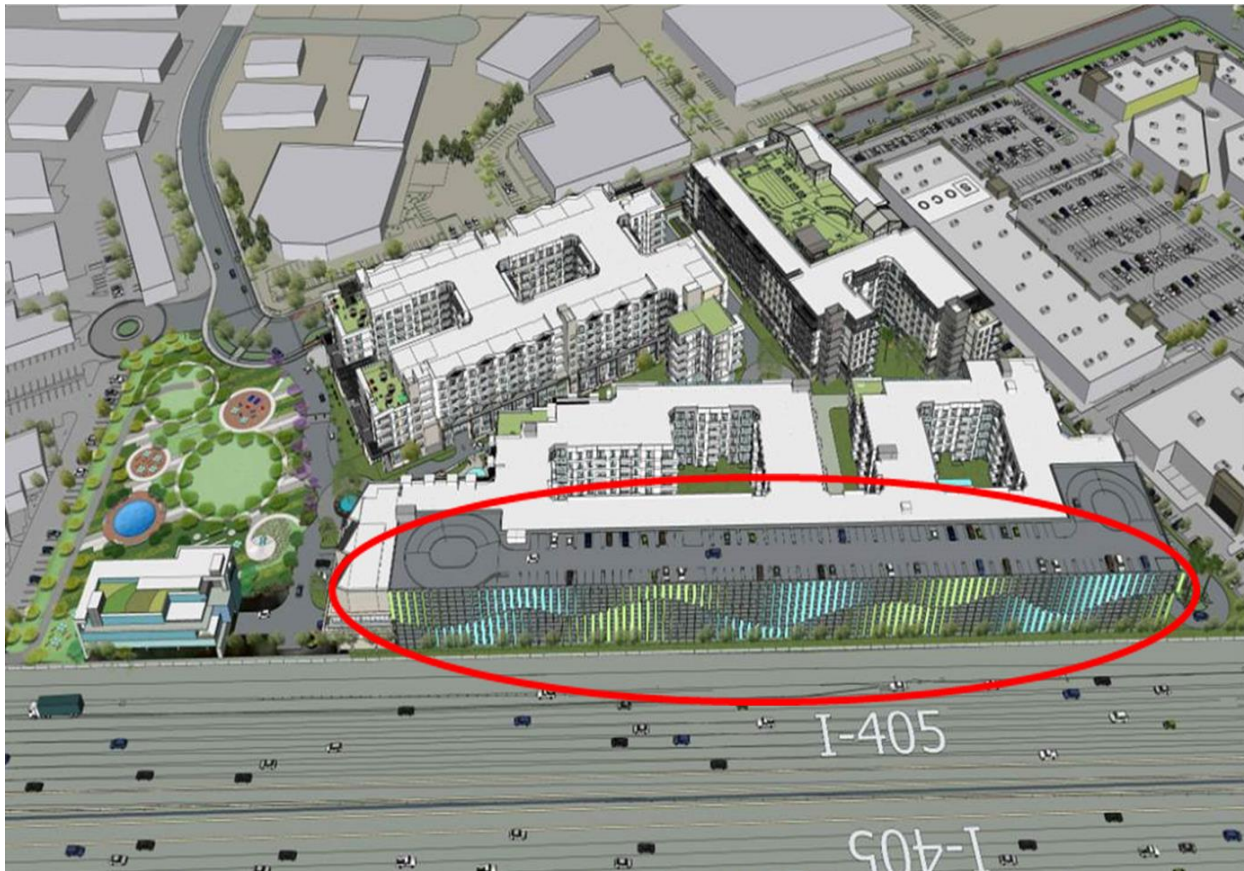
\*\*Interest starts accruing after Year 1 so the remaining balance of the fees paid Year 5 includes the 3% interest rate.

### ***Project Effective Date***

As discussed above, the One Metro West development entitlements included three Ordinances that are not yet in effect. Ordinances Nos. 2021-11, 2021-12, and 2021-13 each contain the following language regarding the effective date: "This ordinance shall become effective following approval of the Project by the electorate at the next regular municipal election or at a special election funded by the applicant". With the passage of Measure K, and subsequent amendments to Article 22, the applicant is now requesting that the project Ordinances be revised to indicate that the project effective date is the 31<sup>st</sup> day after Ordinance adoption.

### ***Artwork Conditions of Approval***

The One Metro West project includes the development of a parking structure located adjacent to the I-405 freeway. To enhance the façade of the parking structure as viewed from the freeway, the project includes a public art display. The design of the art installment was not known at the time of City Council review and therefore, the project entitlements, when effective, included conditions pertaining to the required review and approval of the art piece. The below Exhibit 1 from the approved project Master Plan shows an example of where a potential art installation would occur.

**EXHIBIT 1 – Example Art Installation**

The following are two conditions in the project Resolution conditions of approval (Resolution 2021-55) addressing the public art requirement:

- COA No. 9 – The final design of the public art display on Building A’s parking structure façade along the I-405 Freeway, which shall incorporate vertical landscaping, shall be subject to review and final approval by the Planning Commission. The Cultural Arts Committee (CAC) may first review the proposed freeway façade design and make recommendations to the Planning Commission. No public art display visible along the I-405 Freeway shall be installed without prior review by and approval from the Planning Commission.
- COA No. 66 – Prior to the issuance of the first building permit for the proposed project, the owner/developer would be required to submit a Design Plan for the Building “A” parking elevation (façade) along the I-405 Freeway for review by the Planning Division and approval by the City’s Cultural Arts Committee. All architectural treatments would exclude the use of moving, flashing, or otherwise visually distracting elements or materials that are highly reflective or generate noise. [PPP-AES-1]

As conditioned, the applicant believes that requiring the submittal of the art design prior to the issuance of the “first building permit”, along with the requirement to incorporate vertical landscaping, is “restrictive and unnecessarily constrains the creative team to a shortened timeframe when the building to which the art display will be attached won’t be ready to receive the installation until many months later”. As such, the applicant is requesting the following amendments to the conditions:

1. Remove Condition No. 9. Instead, the applicant is requesting that the “final design” be subject to the Planning Division and the Arts Commission approval, pursuant to Condition of Approval No. 66. The applicant request would also remove the requirement to install vertical landscaping; and
2. Amend Condition of Approval No. 66 to modify the art design plan submittal date to prior to certificate of occupancy for Building “A”, instead of prior to the “first building permit.”

As indicated above, the project is currently conditioned for the art display to be reviewed by the Cultural Arts Committee with final approval by the Planning Commission (COA No. 9). However, in 2022, the City Council replaced the Cultural Arts Committee with the Arts Commission. Therefore, it is appropriate to amend the project conditions to replace the Arts Committee language with Arts Commission. However, although the Planning Commission emphasized that the Arts Commission would take the lead on the actual art, they believed the final approval should remain with the Planning Commission as they would focus on the architectural components of the installation.

The Planning Commission did not recommend modifying the intent of Condition of Approval No. 66 as it's a mitigation measure and the language is taken directly from the Final EIR. Further, the Planning Commission is not in support of the applicant's request to delay the submittal of the design plan for the elevation and art to “certificate of occupancy”, as it would potentially diminish a cohesive art and elevation design, as the applicant's request would constrain a future art design to a previously constructed facade. However, the Planning Commission is supportive of clarifying the language to indicate that the design plan for the art installation could be submitted at the first structural building permit. In summary, the Planning Commission recommendation results in both conditions remaining with certain minor edits.

Lastly, following the Planning Commission meeting, the applicant submitted a letter requesting the language pertaining to the vertical landscaping be modified, rather than requesting it be eliminated (Attachment 6). If the City Council is supportive of the request, the following language could be added to Condition No. 9 “shall incorporate vertical landscaping **where appropriate as determined by the reviewing bodies...**”. This additional language would enable the Arts and Planning Commission to add vertical landscaping where they believe it is beneficial and appropriate to do so. To review the modified Conditions please review Exhibit D of the Attached Resolution.

### **ENVIRONMENTAL DETERMINATION:**

Pursuant to Section 15162 of the State CEQA Guidelines, the project was reviewed and found to be consistent with the One Metro West Environmental Impact Report (EIR) (State Clearinghouse No. 2019050014), which was certified on May 4, 2021, by the City Council of the City of Costa Mesa (Resolution No. 2021-54). Pursuant to Section 15162 of the Guidelines, no subsequent environmental review is warranted for the project because there are no substantial changes to the project in that there are no modifications to the approved project plans, or required mitigation measures that would relate to the mitigation of a project environmental effect, and no new information of previously unknown environmental effects.



### **ALTERNATIVES:**

The City Council has the following alternatives:

1. Give first reading. The City Council may give first reading to the draft Ordinances.
2. Give first reading with modifications. The City Council may modify the draft Ordinances and give first reading.
3. Not adopt the proposed changes. The City Council may choose to not adopt the proposed amendments.
4. Continue the Ordinances review to a date certain. The City Council may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.

### **FISCAL REVIEW:**

The City's Finance Department has reviewed the applicant's requested payment modifications and determined that the requested five-year payment plan with a three percent (3%) interest rate, in the amount of \$1,348,685, retains the fund's "net present value" by recovering the potential interest and/or inflation monetary reductions that may result by the requested payment delays.

The result is a total payment of \$17,881,474 at the end of the five-year term compared to the current Development Agreement of \$16,532,789, which requires all fees to be paid in Phase I - at the time of issuance of the first building permit.

### **LEGAL REVIEW:**

The draft Ordinances and staff report have been prepared in conjunction with and reviewed by the City Attorney's Office.

### **PUBLIC NOTICE:**

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property.
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper. Public comments received prior to the June 4, 2024 City Council meeting, may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](#).

**CITY COUNCIL GOALS AND PRIORITIES:**

This item supports the City Council Goal to diversify, stabilize, and increase housing to reflect the community needs in that the project contributes to helping the City meet its City's 6th Cycle RHNA allocations, including affordable housing allocation. The project includes 1,057 units within a mixed-use multi-family residential development. The project provides 10 percent of the project dwelling units (minimum of 106 units) as affordable units to low- and very-low-income households.

**CONCLUSION:**

The proposed amendments do not modify the development plans; rather, they modify the timing of implementing the project while ensuring the City receives the agreed-upon public benefits. The amendments to the Development Agreement from a single fee payment to a two-payment plan over five years with a 3% interest rate, is intended to assist the applicant in meeting the financial commitments to the City while ensuring the City retains the full value of the development fees. Lastly, the applicant proposed language modifications to the Ordinances would be consistent with Article 22 of the CMMC. Based on the above, staff and the Planning Commission recommend approval of the proposed amendments, as stated in this Report, and per the attached Ordinances and Resolution.