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**Title:** Approval of an Amendment to a Development Agreement for the Mixed-use Project at 1205 Coleman Avenue

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**Attachments:** 1. First Amendment to Development Agreement, 2. Resolution Recommending City Council Approval of First Amendment to Development Agreement, 3. Development Agreement Ordinance, 4. Applicant Statement of Justification, 5. Applicant Zoom Meeting Presentation of 5.28.20, 6. Staff PowerPoint

Date	Ver.	Action By	Action	Result
6/10/2020	1	Planning Commission	Approved	Pass
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**REPORT TO PLANNING COMMISSION**

**SUBJECT**

Approval of an Amendment to a Development Agreement for the Mixed-use Project at 1205 Coleman Avenue

**BACKGROUND**

The project site consists of two parcels totaling 21.4 acres located at the southwest corner of Coleman Avenue and Brokaw Road. The majority of the site (20.4 acres) is located in the City of Santa Clara (APN: 230-46-069). The 1.0-acre portion at the southeastern corner of the site is located in the City of San Jose (APN: 230-46-070). The project site is currently vacant and was previously developed with industrial and office/research and development uses formerly occupied by FMC, United Defense and BAE Systems.

On July 9, 2019 the City Council approved entitlements for phased development of a mixed-use project (“Gateway Crossings”) on the project site. These entitlements include a General Plan Amendment to Santa Clara Station Very High Density Residential (51-120 du/ac) with a minimum commercial Floor Area Ratio (FAR) of 0.20 and rezoning of the project site to Very High Density Mixed Use (PLN2016-12318); a Vesting Tentative Subdivision Map (PLN2016-12321); and Development Agreement (DA) (PLN2017-12481) to allow development phasing of the project. At the same meeting, the City Council approved and certified the Environmental Impact Report and the Mitigation Monitoring and Reporting Program for the Gateway Crossings Project (CEQ2016-01025 / SCH#2014072078).

The Gateway Crossings Project includes the construction of up to 1,565 multi-family residential units,

45,000 square feet of supporting retail and associated parking within four multi-story buildings on individual parcels (Buildings 1 - 4); a 152,000 square foot high-rise hotel with 225 rooms and associated parking; 2.6 acres of dedicated park land; private streets and shared surface parking on common lots; site landscaping; and public and private on- and off-site improvements.

### *Development Agreement*

The Gateway Crossings DA establishes the terms and obligations of development as well as the order and timing of these obligations. The DA vests the maximum density and intensity of uses; the maximum building heights and gross floor area of land uses; and the permitted uses. It affirms that the project is to be developed as a single integrated development and shall adhere to the approved Development Plans, achieve USGBC LEED silver standards or their equivalent and provide the requisite affordable housing units for each phase of development.

Development phasing is specified in the DA. Project development is to occur in two phases with construction of Buildings 1 and 2 and the public park in Phase 1. The building permit for Building 2 is not to be issued unless and until the building permit for the hotel is issued and construction on the hotel has begun. Construction of Buildings 3 and 4 is to occur in Phase 2. On and off-site public and private improvements and utilities associated with each phase would be coordinated and constructed to serve each phase of development.

The DA includes provisions for minor modifications to the Development Plan, including an offset in the hotel and retail square footage to maintain the minimum 0.20 FAR commercial requirement. The DA also memorializes the type and timing for payment of development fees (including regional, local and fair share traffic fees and bicycle and pedestrian improvement fees), parkland dedication and maintenance obligations, and leasing terms with the Santa Clara Police Activities League (PAL) for commercial space to conduct youth programs on the project site.

The DA has a five-year term with an automatic five-year extension if the Developer physically commences construction of at least one building in accordance with the Development Plan prior to the expiration of the initial five-year period. The effective date of the DA is September 26, 2019.

### **DISCUSSION**

The Applicant, Hunter Storm, through its affiliate TOD Brokaw, LLC (“Property Owner”) is requesting an amendment of the project DA to modify the required timing of construction for the hotel. As approved, the DA requires construction of the hotel in Phase 1 development of the mixed-use project. Due to the economic downturn caused by the COVID19 pandemic that is impacting the restaurant, hotel and travel sectors, the Applicant is requesting to move the construction of the hotel to prior to the first residential building in Phase 2 of project development. An amendment to the DA is required to alter the phasing of the approved development.

The primary issue for analysis is the project’s consistency with the City’s General Plan and Zoning.

### **Consistency with the General Plan**

General Plan Amendment #87, approved in 2019, changed the land use designation for the project site from Regional Commercial, High Density Residential and Very High Density Residential to Very High Density Residential with a minimum commercial FAR of 0.2. The Gateway Crossings Project was approved for construction of 1,565 residential units at 73.1 units per acre and 197,000 square feet of commercial (hotel and supporting retail) at a FAR of 0.21 consistent with this designation. The proposal to modify the timing of hotel construction does not include changes to the approved land

use types or intensity of development that is to occur on the site. Therefore, the proposed DA amendment is consistent with the General Plan land use designation for the property.

#### Consistency with the Zoning

In conjunction with the General Plan Amendment approval, the project site was rezoned from Light Industrial (ML) to Very High-Density Mixed Use to allow phased construction of the Gateway Crossings Project as a mixed-use development with residential and commercial intensities and development standards different from other zoning designations in the City Code. The proposal does not involve a change in the number of phases of development, mix of land uses or intensities of development. The proposal is to move the construction of the hotel from Phase 1 to Phase 2 due to current economic conditions related to the COVID 19 pandemic.

#### Purposes for a Development Agreement

The DA is a voluntary agreement between the City and a developer to establish obligations for both parties in connection with the land use entitlements issued by the City. Both parties need to agree to the terms of the DA through a negotiated process. Development of the hotel in the near-term was an important City objective and therefore included as a requirement in the DA to provide a benefit to the City. The developer voluntarily agreed to a requirement that the hotel start construction prior to the issuance of building permits for Building 2 (the second of four residential buildings included in the project entitlements.) The project provides other benefits to the City, including the development of affordable and market-rate residential units and provision of space for the PAL. Market conditions have changed as a result of the Coronavirus that make near-term development of the hotel infeasible or very unlikely. A residential developer is prepared to partner with the applicant to develop Buildings 1 and 2 of the project as a coordinated phase, but the developer has not been able to identify a partner to develop the hotel.

#### Conclusion

The global pandemic caused by the Coronavirus is having a severe economic impact on a number of business sectors. Especially hard hit are the travel and hospitality sectors and the timeline for their recovery is unknown. The entitlements for the Gateway Crossings Project were approved prior to the outbreak of this pandemic and did not anticipate its impact. As approved, the DA for the Gateway Crossings project requires that the hotel be under construction in Phase 1 prior to the issuance of building permits for Building 2. The proposal is to move the requirement to begin construction of the hotel to be prior to construction of Building 3 in Phase 2 and allow the issuance of building permits for Building 2 at the same time as Building 1, in response to market conditions that make development of a hotel infeasible in the near-term while there continues to be strong demand for new housing. This proposal would allow 725 residential units, of which 73 would be affordable units, 11,200 square feet of supporting retail, parkland, and 7,500 square feet of commercial space for PAL youth programs to be constructed in Phase 1 at the same time; as well as time for market recovery and resurgence in the travel and hospitality sectors to support development of the hotel prior to the project's residential Building 3.

### **ENVIRONMENTAL REVIEW**

The environmental record for the Gateway Crossings Project consists of the Draft Environmental Impact Report (DEIR), Final Environmental Impact Report (FEIR), FEIR Appendices, and Supplemental Text Revisions Memorandum that together constitute the EIR and includes the Mitigation Monitoring and Reporting Program (MMRP). The documents were prepared and reviewed in accordance with California Environmental Quality Act requirements. The EIR and MMRP were approved and certified by the City Council at a public noticed meeting on July 9, 2019. Copies of the

EIR and MMRP are available for review on the City's website at:

<https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/157/3650?alpha=G>.

The proposed Amendment to the Development Agreement to move hotel construction from Phase 1 to Phase 2 of development does not modify the approved land uses, intensity of development or timing of full build-out of the project and therefore would not result in new significant impacts or impacts of substantially greater severity to require further environmental analysis.

### **FISCAL IMPACT**

There is no fiscal impact to the City for processing the requested application other than administrative staff time and expense typically covered by processing fees paid by the applicant. As proposed, none of the terms of the DA would be modified except for the phasing of hotel construction. The project would be subject to building permit and development fees in accordance with the City's Fee Schedule and paid at the time of building permit application.

### **COORDINATION**

This report was coordinated with the City Attorney's Office.

### **PUBLIC CONTACT**

The notice of public hearing for this item was posted within 300 feet of the project site and mailed to property owners within 1,000 feet of the project site and to approximately 4,800 properties within the Old Quad on May 29, 2020. Newspaper notice of this item was published in *The Weekly* on May 27, 2020. The full administrative record is available for review during normal business hours by contacting the Planning Division. At the time of this staff report there has been no public input submitted to the City in support or opposition to the proposal.

Public contact was also made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

### **Public Outreach Meetings**

A virtual public outreach meeting was conducted by the Applicant on May 28, 2020 from 6:00 p.m. to 8:00 p.m. Planning staff participated in the Zoom meeting to note public comment. Consistent with public outreach provided for the Gateway Crossings Project development entitlement process, notices of this virtual outreach meeting were mailed to property owners within 1,000 of the project boundaries and approximately 4,800 properties in the Old Quad and was posted on the City's Community Meeting webpage. Email notifications were also provided to interested parties.

Josh Rupert, representing Hunter Storm, began the presentation with an overview of the approved project and status of the economic impact of COVID 19 on the hospitality industry. Mr. Rupert informed the public of the efforts taken by Hunter Storm to market the site for hotel development and occupancy that have led to the request to amend the DA to move the construction of Building 2 before the hotel. Mr. Rupert concluded with a proposal illustrating an interim use for the hotel site as open landscaped area and surface parking lot for public use until hotel construction occurs prior to Phase 2 development and the construction of Building 3. The applicant's PowerPoint presentation is

provided as Attachment 5 and is on the City's website at <https://www.santaclaraca.gov/Home/Components/Calendar/Event/73959/41> and <https://www.santaclaraca.gov/Home/Components/BusinessDirectory/BusinessDirectory/237/2495?alpha=G> .

A total of 44 members of the public were logged into the Zoom meeting; of which approximately two-thirds provided comments and questions either verbally or by text. A number of individuals asked for clarification on the phasing and timeline for construction of the residential buildings and hotel, when capital will be available to finance construction of the hotel, and the reasoning for the requirement to construct the hotel prior to Building 2 in the DA. Most of those who participated expressed their opposition to moving the timing of hotel development after Building 2 and before Building 3 as proposed, and perceived loss of transit occupancy tax revenue to the City. A few individuals asked whether Building 2 could be constructed first in place of Building 1 so that the PAL lease space, which is to be provided in Building 2 would be provided at the outset of the project. Other members of the public voiced their disappointment that alternative options were not being presented and that the community was not consulted by the developer prior to the Zoom meeting for engagement. City staff explained that the DA Ordinance sets a limited time for which a DA Amendment must be set for Council hearing once filed. One individual spoke in favor of the proposed DA Amendment given current economic conditions caused by the pandemic and that timing for recovery of the market is unknown; further stating that the proposal would provide construction jobs and needed housing and would facilitate the near term construction of space that would be leased by PAL in Building 2.

### **ALTERNATIVES**

1. Adopt a resolution to recommend the City Council approve the First Amendment to Development Agreement for the Gateway Crossings Project between the City of Santa Clara and TOD Brokaw, LLC.
2. Adopt a resolution to recommend the City Council deny the First Amendment to Development Agreement for the Gateway Crossings between the City of Santa Clara and TOD Brokaw, LLC.
3. Make no recommendation at this time
4. Make an alternative recommendation for approval of the Development Agreement with additional terms.

### **RECOMMENDATION**

Make a recommendation to the City Council using the Alternatives provided.

Reviewed by: Andrew Crabtree, Director of Community Development

Approved by: Deanna Santana, City Manager

### **ATTACHMENTS**

1. First Amendment to Development Agreement between the City of Santa Clara and TOD Brokaw, LLC.
2. Resolution Recommending City Council Approval of the First Amendment to Development Agreement Between the City of Santa Clara and TOD Brokaw, LLC.
3. Development Agreement Ordinance
4. Applicant Statement of Justification
5. Applicant Zoom Meeting Presentation of May 28, 2020