

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK
OAKLAND, CALIF.

AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Living Wage Exemption at Foothill and Seminary

DATE: January 12, 2015

City Administrator
Approval

Date

1/28/15

COUNCIL DISTRICT: # 6

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

An Ordinance Amending The Living Wage Ordinance, Codified As Chapter 2.28 Of The Oakland Municipal Code, To Exempt The Sunfield Development Retail Project At Foothill Boulevard And Seminary Avenue From Living Wage Requirements

EXECUTIVE SUMMARY

The City of Oakland owns the 1.69 acre site formerly consisting of eleven contiguous vacant parcels of land on the southwest corner of Foothill Boulevard and Seminary Avenue. The site previously consisted of a number of privately held commercial and residential blighted properties, which have all since been demolished and cleared by the former redevelopment agency. The project expects to be developed into a new 27,000 square foot retail commercial project with a 14,250 square foot Walgreens as the anchor tenant. The project received Council approval in May 2012 to enter into a Disposition and Development Agreement (DDA) with Sunfield Development. However, since the proposed anchor tenant expects that a small number of store employees may not meet the City's Living Wage Ordinance, they are currently unable to sign the lease without an exemption to this requirement. Therefore, staff is currently recommending that the retail project at Foothill and Seminary be exempted from the City's Living Wage Ordinance in order to allow the proposed anchor tenant to sign the lease and bring a new commercial retail development to the area.

OUTCOME

Exempting the project from the Living Wage Ordinance would allow for a new commercial/retail development that is expected to generate financial benefits for the City from property taxes, business license taxes, sales taxes and utility taxes. Even with the proposed living wage exemption, the project intends to fully comply with the minimum wage requirements recently approved by voters in November 2014. The project will bring in much needed

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neighborhood retail to help establish a strong sense of place, which will strengthen additional retail demand and will generate both short and long-term job opportunities for Oakland residents. This area is also currently receiving major streetscape improvements along Foothill Boulevard and Seminary Avenue and also has been targeted for proposed façade and tenant improvements, all of which will help to revitalize this very important neighborhood retail node. Finally, the development puts an underutilized property to productive economic use and acts as an economic catalyst for this commercial district.

The Central East Oakland area lacks neighborhood retail that provides for daily and general goods and services to the local community. This neighborhood commercial retail shopping center will provide a much needed pharmacy, wellness services and other neighborhood retail services.

BACKGROUND/LEGISLATIVE HISTORY

The former redevelopment agency previously acquired and assembled a total of eleven contiguous parcels of land at the southwest corner of Foothill Boulevard and Seminary Avenue and has since merged the lots into a 1.69 acre parcel. The property is located approximately six blocks south of Mills College with primary frontage on Foothill Boulevard, Seminary Avenue, and Bancroft Avenue. The proposal includes two new buildings fronting on Foothill Boulevard with a surface parking lot in the rear along with one additional building pad in the middle of the parking lot and one fronting on Bancroft Avenue. The four buildings will include approx. 27,000 square feet of new commercial space and 95 off-street parking stalls. The buildings fronting on Foothill Boulevard would contain a mix of retail sales, food sales and potentially a financial services activity (retail bank) with the larger retail building containing a drive-thru, but would not be permitted for a fast-food activity (see *Attachment A*). This area is also undergoing major streetscape improvements along Foothill Boulevard and Seminary Avenue as well as proposed façade and tenant improvements, all of which will help revitalize this very important neighborhood retail node.

On September 4, 2009, a Notice of Development Opportunities (NODO) was issued to solicit development proposals for the property. The former redevelopment agency received three proposals and formed a selection committee for the purpose of reviewing the proposals and to conduct in-depth interviews with all three respondents. The committee evaluated the overall feasibility for each proposed project, which was based on multiple categories and ranked them accordingly.

Sunfield Development, LLC ranked first in the initial round of evaluations and its submittal of additional information further solidified the Agency's selection of its project. The former agency entered into an Exclusive Negotiating Agreement (ENA) period, which allowed the developer to demonstrate financial capacity, financial feasibility, finalize project design, solidify cost estimates, solicit statements of interest from retail operators and conduct applicable market feasibility studies for the retail components. In addition to performing these tasks, Sunfield

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utilized the ENA period to complete the California Environmental Quality Act (CEQA) review and was approved by the Planning Commission on October 19, 2011.

In May 2012, City Council approved Ordinance No. 13114 C.M.S., which approved a disposition and development agreement for the sale of the property to Sunfield Development for \$6,000 for the purposes of the neighborhood retail development. In July 2012, the Oakland City Council approved Resolution No. 84521 C.M.S. approving the allocation of up to \$6 million of new market tax credits by the Oakland Renaissance NMTC, Inc. to a sub-community development entity affiliated with Oakland Renaissance NMTC, Inc. to allocate tax credits to Sunfield Development LLC for the development of Seminary Point. The new market tax credits also require living wages to be paid by the developer's tenants.

In May 2013, the Oakland Redevelopment Successor Agency (ORSA) received a Finding of Completion from the California Department of Finance (DOF) and in July 2013, ORSA submitted a Long Range Property Management Plan (LRPMP) to DOF for review and approval. In May 2014, ORSA finally received approval of the LRPMP from DOF. Per the LRPMP, the property was transferred to the City.

ANALYSIS

The exemption will allow the developer to sign with a major retailer that would not otherwise locate in East Oakland. The DDA allows the developer to enter into lease agreements with tenants and pursue the development of the property. However, the DDA has not been executed because the proposed retail anchor tenant is unable to meet the requirements of the Living Wage Ordinance. The anchor tenant will provide much needed entry level jobs and local goods and services in the Foothill Seminary area.

Even with the living wage exemption, the proposed anchor tenant is fully prepared to comply with the minimum wage requirements recently approved by voters in November 2014. In addition, as standard store policy the proposed tenant provides health benefits to employees after 90 days and with a 30 hour work week. The retail project will redevelop the property and provide approximately 116 jobs with 52 construction jobs and 54 permanent jobs.

According to the Living Wage Ordinance, the requirements are in effect when a "City Financial Assistance Recipient" (CFAR) receives a subsidy in amount of \$100,000 or more in a 12 month period and employs at least 20 employees for each working day in each of 20 or more calendar weeks in the 12 months after occupying or using such property. Sunfield Development's acceptance of the land write down triggers the living wage requirement for them and all tenants of the subsequent development since the living wage requirements are in effect five years after the start of construction. Since Sunfield will be purchasing the property from the City with a land write down or subsidy, the project is ultimately considered a City Financial Assistance Recipient (CFAR) under the Living Wage Ordinance. In addition, the \$6 million allocation of new market

tax credits nets approximately \$1.2 million worth of additional capital towards the project and is therefore considered an additional subsidy which triggers the living wage ordinance.

The proposed anchor tenant will provide much needed entry level jobs and services in the Foothill Seminary area. Since Walgreens anticipates hiring 20 employees within the five year period, they have requested an exemption from the living wage requirement. Sunfield Development and their retail broker have attracted multiple tenants to the project and have secured letters of intent. Of the remaining tenants, none have expectations of hiring more than 10 employees. Neither staff nor the developer anticipates any of the remaining tenants of the project triggering the living wage ordinance.

It is important to note that the Foothill Seminary retail corridor has not seen any major investment for over 20 years and this node was also identified in the City of Oakland's Retail Strategy. The Retail Strategy identified the need for "another convenience anchor store such as a drug store to create a stronger customer draw for local residents."

PUBLIC OUTREACH/INTEREST

The property is located in Central East Oakland in District 6 within the Central City East Redevelopment Project Area. The Project Area was established in 2003 after neighborhood groups, including merchants, requested that the City Council include the area in a redevelopment project. Residents were frustrated with deteriorating conditions along the commercial corridors in the central and eastern portions of the City and the impact on the adjacent residential areas. Residents cited deteriorated and vacant buildings, prostitution and drug trafficking as specific problems impacting the Foothill Seminary area. Residents, community groups and numerous agencies have expressed letters of support in favor of the proposed neighborhood commercial uses.

The proposed development was presented to the Planning Commission and approved on October 19, 2011.

COORDINATION

Project Implementation staff from the Economic and Workforce Development Department have consulted with the City Attorney's Office and Contract Administration in the preparation of this report. In addition, Planning and Zoning took the lead towards seeking Planning Commission approval for the project and Real Estate staff led the acquisition of the former eleven parcels.

COST SUMMARY/IMPLICATIONS

The developer previously submitted a \$25,000 partial expense payment to the City of Oakland to cover staff cost associated with the Development and Disposition Agreement (DDA). Overall, the minimum wage ordinance requires wages not less than twelve dollars and twenty-five cents

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(\$12.25) and the living wage ordinance requires wages not less than twelve dollars and twenty-seven cents (\$12.27) which results in a wage difference of two cents (.02).

FISCAL/POLICY ALIGNMENT

Sunfield Development, LLC will be required to pay prevailing wages during the entire construction phase of the project. The benefits to the community include the reuse of a vacant underutilized property to long term economic use. The following list some of the financial benefits to the community and City:

1. City Sales Tax- Sales tax is imposed upon every retailer for the privilege of selling tangible personal property at retail. The City receives .0095 of each taxable dollar generated by retailers. The estimated annual sales tax is \$57,750.
2. Jobs Generated- 106 total jobs with the breakdown as approximately 52 construction jobs and 54 permanent jobs.
3. Permit Fees- Approx. \$152,000
4. Business License Tax- The annual business license tax is estimated to be \$9,800.
5. Utility Tax- The annual utility tax is estimated is \$3,350.
6. Property Tax- The property tax estimated to be received annually is \$97,325 to the City. The property tax will be based on the improvements to the property and the appraised value of the property.

SUSTAINABLE OPPORTUNITIES

Economic: The project will replace an underutilized vacant and blighted property with a new commercial neighborhood retail center which will act as a commercial catalyst for this district. The project will create new permanent employment opportunities as well as temporary construction-related jobs. The project will generate sales tax, property taxes, utility taxes and business license tax.

Environmental: The project will remove a blighted property from this commercial node and will create an infill neighborhood commercial retail development. The developer will use its good faith efforts to design, develop and construct the Project to be environmentally sustainable in conformance with the Build it Green commercial checklist.

Social Equity: The project will provide much needed access to retail services for daily goods and services in the Central East Oakland neighborhood and community. The project will bring a pharmacy, health and wellness services and retail to a neighborhood that is lacking and in need of these services. The area currently lacks the basic goods and services that should be available to residents.

CEQA

The project was approved by the Planning Commission on October 19, 2011 with a Notice of Exemption (NOE) based on an in-fill exemption (Section 15332 on the California Environmental Quality Act).

For questions regarding this report, please contact Larry Gallegos, Project Implementation Division at (510) 238-6174.

Respectfully submitted,



Rachel Flynn, Acting Director
Economic and Workforce Development
Department

Reviewed by:

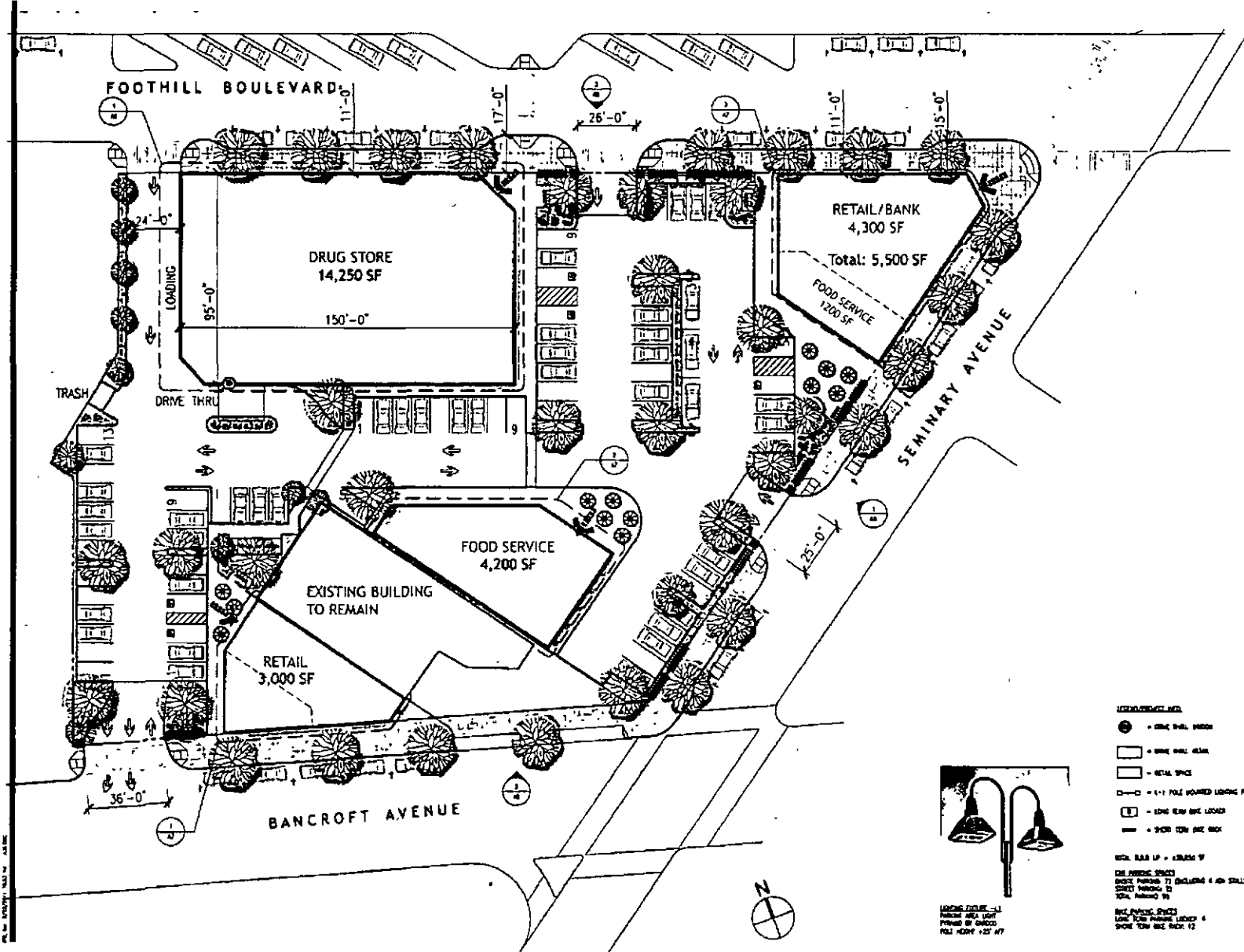
Patrick Lane, Acting Project Implementation Manager

Prepared by:

Larry Gallegos, Project Area Manager
Project Implementation

Attachments

Attachment A. Site Plan of Seminary Foothill Project



- LEGEND**
- - CONC. CURB, W/EDGE
 - - CONC. CURB, W/SLAB
 - - METAL SPACE
 - - 1-1-1 FOLD DOWNED LIGHTING FIXTURE
 - - LONG TUBE MET. LIGHTS
 - - 3/4" DIA. CONC. PIPE
- NOTES:**
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Lighting fixture - 1-1-1
 fixture size 1/2"
 fixture by GESCO
 pole height +25' H/P

**SEMINARY POINT
 RETAIL
 DEVELOPMENT**

Oakland, California



1200 Shattuck Avenue, Suite 100, Oakland, CA 94608
 Telephone: 510-437-2000 Fax: 510-437-2001

| Revision | Date |
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Drawing Title

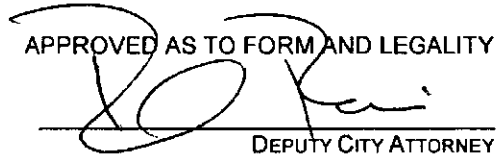
SITE PLAN

Drawing No.

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OAKLAND

2015 JAN 29 PM 1:11

APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING THE LIVING WAGE ORDINANCE, CODIFIED AS CHAPTER 2.28 OF THE OAKLAND MUNICIPAL CODE, TO EXEMPT THE SUNFIELD DEVELOPMENT RETAIL PROJECT AT FOOTHILL BOULEVARD AND SEMINARY AVENUE FROM LIVING WAGE REQUIREMENTS

WHEREAS, the City owns a parcel of land located at the southwest corner of Foothill Boulevard and Seminary Avenue (the "Property"), consisting of 1.73 acres, as more particularly described in the staff report accompanying this Ordinance; and

WHEREAS, the City acquired the Property from the Oakland Redevelopment Successor Agency in 2014 for development purposes; and

WHEREAS, on September 4, 2009, the City issued a Notice of Development Opportunities ("NODO") to solicit development proposals for the Property; and

WHEREAS, of the three proposals received in response to the NODO, the City's review panel awarded the highest number of points to the development proposal submitted by Sunfield Development, LLC ("Sunfield"); and

WHEREAS, Sunfield has proposed to purchase the Property from the City and develop approximately 27,000 square feet of new neighborhood-serving commercial retail uses with 95 off-street parking stalls as part of the project; and

WHEREAS, on April 7, 1998, the City Council adopted the Living Wage Ordinance, Ordinance No. 12050 C.M.S., (now codified as Chapter 2.28 of the Oakland Municipal Code) requiring City financial assistance recipients ("CFARs"), including developers who purchase property from the City with land write downs (i.e., purchase at a price less than fair market value), to pay living wages to its employees; and

WHEREAS, the Living Wage Ordinance also requires certain commercial tenants of CFARs who occupy such property to pay living wages to their employees; and

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 13114 C.M.S. authorizing a Disposition and Development Agreement with Sunfield or an affiliate for the sale of the Property for \$6,000 for development as a retail shopping center, and allocating \$150,000 for remediation of the site; and

WHEREAS, Sunfield will be purchasing the Property from the City with a land write down, and therefore is considered a CFAR under the Living Wage Ordinance; and

WHEREAS, on July 16, 2012, the City Council adopted Resolution No. 84521 C.M.S. approving the allocation of up to \$6 million of new market tax credits by Oakland Renaissance NMTC, Inc., to Sunfield or its affiliate for the project; and

WHEREAS, the allocation of new market tax credits also requires living wages to be paid by the developer and the developer's tenants; and

WHEREAS, Sunfield is ready to sign a lease with an anchor retail tenant that will locate on the site and will provide a needed pharmacy, wellness services, and goods and services that are not available in the immediate community; and

WHEREAS, the project will redevelop the Property and provide approximately 116 jobs, with 52 construction jobs and 54 permanent jobs; and

WHEREAS, staff is requesting amendment of the Living Wage Ordinance to exempt the Sunfield project so that the project can be developed, because without the exemption the anchor tenant will not locate on the site; and

WHEREAS, developing the Property as a neighborhood-serving commercial retail center will further the health, safety, and general welfare of the residents of the City of Oakland by improving access to local goods and services and bringing a pharmacy and wellness services to the East Oakland community; and

WHEREAS, the development of the Property will eliminate physical blight, bring a vacant property to productive economic use, act as a catalyst for the Foothill Seminary commercial district, and generate financial benefits for the City from property taxes, business license, sales taxes, and utility taxes; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council hereby amends Ordinance No. 12050 C.M.S., the Living Wage Ordinance, along with its implementing regulations, to exempt the Sunfield Development retail project at Foothill Boulevard and Seminary Avenue from living wage requirements, notwithstanding anything to the contrary in the Living Wage Ordinance or its implementing regulations.

SECTION 2. Section 2.28.090 of the Oakland Municipal Code is hereby amended to add the following subsection:

- D. The Sunfield Development retail project at Foothill Boulevard and Seminary Avenue shall be exempt from the provisions of this chapter.

SECTION 3. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2015

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, PRESIDENT GIBSON
MCELHANEY, GUILLEN, KALB, KAPLAN, REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

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**AN ORDINANCE AMENDING THE LIVING WAGE
ORDINANCE, CODIFIED AS CHAPTER 2.28 OF THE
OAKLAND MUNICIPAL CODE, TO EXEMPT THE SUNFIELD
DEVELOPMENT RETAIL PROJECT AT FOOTHILL
BOULEVARD AND SEMINARY AVENUE FROM LIVING
WAGE REQUIREMENTS**

NOTICE AND DIGEST

This Ordinance would amend the Living Wage Ordinance, codified as Chapter 2.28 of the Oakland Municipal Code, to exempt the Sunfield Development retail project at Foothill Boulevard and Seminary Avenue from living wage requirements