



AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Ed Reiskin
Assistant City Administrator

SUBJECT: SUPPLEMENTAL - 0 Mandela
Parkway Appeal

DATE: January 27, 2020

City Administrator Approval

Date:

1/30/20

RECOMMENDATION:

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Consider Adopting A Resolution Denying The Appeal By UNITE HERE Local 285d, And Thus Upholding The Planning Commission's Approval of 1) A Major Conditional Use Permit To Construct A Six-Story Building Consisting Of 220 Rooms Measuring Approximately 142,813 Square Feet Of Floor Area, 2) A Minor Conditional Use Permit For Transient Habitation (Hotels) And Non-Residential Tandem Parking, 3) A Variance Of The Front Setback And 4) Related California Environmental Quality Act (CEQA) Findings For The Proposed Building Located At 0 Mandela Parkway Oakland CA (Project Case No.PLN16394).

REASON FOR SUPPLEMENTAL:

At the November 19, 2019 City Council meeting, staff presented the 0 Mandela Parkway appeal (**Attachment A**). At this meeting, the City Council requested a supplemental report to further analyze the Planning Code Conditional Use Permit (CUP) Finding for Transient Habitation. In addition, the City Council requested an analysis of compliance with and enforcement of Measure Z. This supplemental report addresses the concerns of the Council.

PROJECT ANALYSIS:

In response to the City Council request, this supplemental report provides additional analysis related to the requests for information as follows:

1) Transient Habitation Commercial Use Permit Finding

Planning Code Section 17.103.050 (A)(2) is a required finding for proposed hotels that reads: *"The proposal considers the impact of the employees of the hotel or motel on the demand in the City for housing, public transit, and social services."*

On June 6, 2018, the Planning Commission made this finding:

"The hotel proposal will provide new employment and help to diversify the economic base of the City by creating approximately 44 permanent jobs. There are housing alternatives as new market rate and affordable residential development have been approved and others are being constructed in the City of Oakland for

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future residents. The project is located close to existing public transit with AC Transit bus lines running along 40th Street and San Pablo Avenue that will provide services to hotel employees. The proposal would not create social services impacts because the new jobs can provide economic opportunities to Oakland residents and help reduce unemployment rate. To help promote jobs and the hiring of local residents, staff recommends a condition of approval. See Condition of Approval #15.

The Planning Commission also considered the applicant's voluntary commitment to pay \$15.00 an hour to all employees and approved the 0 Mandela Parkway project (Mandela Hotel Project) with a formalized condition for a higher minimum wage (Condition of Approval #15).

In response to the City Council request, staff provides the additional analysis to address the City Council's concerns, and elaborates on the transient habitation finding as follows:

- a. Housing- The Mandela Hotel Project would employ approximately 44 employees, some of whom may already have housing, or may search for new housing in Oakland or in neighboring cities such as San Leandro or Berkeley.

The City of Oakland projects development of approximately 9,300 residential units (market-rate and affordable) in the near future. This represents units that are under construction, under review, or are recently completed. Some of these new units are located near the project site in West Oakland.

In November 2018, Oakland voters approved Measure Z, which raised the minimum wage for hotel workers from \$13.23 to \$15.00 an hour with health benefits and \$20.00 an hour without health benefits. This new law took effect on July 1, 2019.

In comparison to other City of Oakland service industries where the minimum wage of \$13.80 is offered, staff finds that the hotel service industry offers a higher minimum wage of \$15.00 an hour. Therefore, the impact Mandela hotel employees would have on the demand for housing would be less than if they earned only minimum wage. Higher wages would result in more housing options available for hotel employees as compared to minimum wage workers.

- b. Public Transit- The Mandela Hotel Project is located in an established commercial and high-density residential area served by two AC Transit bus lines along 40th Street and San Pablo Avenue. In addition, the Emery Go-Round is a free shuttle that runs along 40th Street, connecting riders to and from other AC Transit lines in Oakland, Emeryville, Berkeley, and the MacArthur Bay Area Rapid Transit (BART) Station. This shuttle bus runs one block from the project site.

It is unlikely that the Mandela Hotel Project employees would significantly impact the demand for public transit because the employees would earn wages and pay to ride the bus. The project sponsor would also be required through the conditions of approval to offer on-site sales of discounted AC transit passes to the employees. In summary, these passengers would be paying for the provision of any required service to meet their needs.

- c. Social Services- The Mandela Hotel Project would provide economic opportunities to Oakland residents, and potentially reduce the unemployment rate, thus employees would be less dependent on social services. The 44 employees of the Mandela Hotel Project would have less impact on the demand for social services than minimum-wage earners and unemployed community members.

2) Compliance With And Enforcement Of Measure Z

BACKGROUND:

In November 2018, Oakland voters passed Measure Z: the Oakland Hotel Employee Minimum Wage Charter Amendment, a multi-level measure that established a number of changes related to Oakland's hotel industry, including:

- ✓ Requiring a minimum wage of \$15 per hour with healthcare benefits or \$20 per hour without healthcare benefits expressly for hotel workers;
- ✓ Ensuring workplace protections including "Panic Buttons", for hotel workers who may experience threatening behavior;
- ✓ Ensuring a humane workload, appropriate preservation of labor/work record;
- ✓ Prohibiting retaliation;
- ✓ Providing for a waiver under bargaining agreements with clearly stated terms;
- ✓ Requiring enforcement and the creation of a department expressly for the purpose of ensuring compliance;
- ✓ Measure Z expressly applies to hotels in the Oakland geographic region with fifty (50) or more guest rooms or suites of rooms.
- ✓ The law applies to employers/vendors/service providers who contract with hotels. For instance, a hotel may contract with employers who provide spa services and food and beverage services; these contractors are hotel employers under the hotel workers law.

The initial draft proposed Interpretive Regulations were released on October 16, 2019 for Public Comment. In addition, copies of the proposed Interpretive Regulations in English, Spanish, Chinese, and Vietnamese as well as Public Comment period notifications, were hand-delivered by Contracts and Compliance (C&C) Compliance Staff, to all hotels subject to the requirements of Measure Z.

The adjustments to the Measure Z proposed Interpretive Regulations as well as the City's narrative response to comments received by the public were released January 17 for a five (5) work-day Public Comment period. The City Administrator's Office is now finalizing the Measure Z Interpretive Regulations.

ENFORCEMENT:

All wage claims are currently complaint driven, or if there is a tip, Compliance Officers will approach the potential claimant to inform them of their rights and ask if there is an interest in submitting a claim. On October 25, 2019, C&C received the first formal Measure Z violation claims. Since that time, C&C has received 44 additional Measure Z complaints. Of these complaints, all 45 claimants declared non-payment of Hotel Minimum Wages. In addition, two of these complaints also claimed non-disbursement of

panic buttons, and two claimed reduced hours after passage of the ordinance. C&C is currently reviewing the claims received and will conduct further enforcement actions with the release of the regulations.

Upon receipt of a claim, the Compliance Officer will initiate an investigation that may include the following:

- i. Interview, in private, the complaining employee or other employees who work for the subject employer;
- ii. Request and review employer's position statement in response to ordinance violation complaint;
- iii. Demand, examine and analyze the records of the employer, including personnel files, payroll records, schedules, wage records, paid sick leave records, room cleaning logs, employee handbooks, and written policies and procedures.
- iv. Interview the employer and/or employer-provided witnesses;
- v. Request additional documents and information to further investigate complaint; and
- vi. Inspect employer's premises where the complaining employee works.

In October and November 2019, C&C performed spot checks for Measure Z Postings and Panic Buttons and found:

- a) Twenty-four of thirty (24 of 30) Hotels displayed Measure Z Posters for workers to see.
- b) Three of thirty (3 of 30) Hotels did not have Measure Z Posters displayed for workers to see.
- c) Two of thirty (2 of 30) Hotels had some, but not all the Measure Z Posters displayed.
- d) One of thirty (1 of 30) Hotels did not let C&C staff in to see if Measure Z Posters were displayed.
- e) Five of thirty (5 of 30) Hotels did not have any kind of security device or Panic Buttons.
- f) One of thirty (1 of 30) Hotels did not let C&C staff in to check on panic buttons.
- g) Eighteen of thirty (18 of 30) Hotels had Panic Buttons but did not comply with Measure Z requirements
- h) Five of thirty (5 of 30) Hotels had Panic Buttons that might comply with Measure Z requirements, but to be sure, C&C must follow up to closely examine their panic button systems.
- i) One of thirty (1 of 30) Hotels had Panic Buttons that fully complied with Measure Z requirements.
- j) Workers at five of thirty (5 of 30) Hotels informed C&C staff that they have denied the Health Benefit package offered by their employer and do not receive the required \$20 rate.
- k) Workers at one of thirty (1 of 30) Hotels advised C&C that work hours have been reduced.
- l) Workers at one of thirty (1 of 30) Hotels informed C&C staff that workers and management disagree about square footage calculations and humane workloads.

C&C staff subsequently sent non-compliance notices as a result of these spot checks.

WAGE INCREASE:

The Hotel Minimum Wage increase is determined by the Consumer Price Index (CPI) August-to-August adjustment and is effective January 1 of next calendar year. Hotels have been notified of this year's adjustment, which became effective January 1, 2020.

The following Measure Z working documents are located on the Contracts and Compliance website <https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>:

- ✓ Measure Z Complaint Form,
- ✓ Measure Z posters in English, Spanish, Chinese, and Vietnamese
- ✓ Frequently Asked Questions (FAQs)
- ✓ Rules and Regulations
- ✓ Current Clarifying Regulations (Revised are pending final public comment period).

CITY ENFORCEMENT ACTIONS:

Enforcement is currently complaint-driven as opposed to proactive. While the preferred industry method is proactive enforcement, C&C is not currently resourced to provide a more proactive approach.

Compliance staff follow the same baseline enforcement standards applied to enforcement of all wage claims. Adjustments are made according to the scope of each policy or law. For example, Measure Z requires Panic Buttons for safety, and Minimum Wage applies to non-Oakland businesses who have employees working in Oakland.

The investigations process includes the following steps:

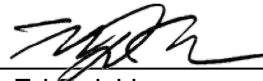
- a) With the help of the enforcement officer, the complainant completes and signs a complaint form to initiate the investigative process.
- b) C&C sends a written notice of complaint to the employer announcing the claim(s) and the City's intent to investigate to determine if wage theft, or other non-compliance action, has occurred.
 - i. A notice of complaint includes a detailed request for data and documents such as payroll records, pay stubs, cleaning logs, any other documents specific to the claim.
 - ii. Employees must respond within two weeks, with follow up.
 - iii. If records are not received by the deadline, a subpoena will be sent.
- c) Staff conducts scheduled and unannounced site visits in order to interview workers, review workplace environment, notices, etc.
- d) Upon receipt of records, staff conducts a thorough review to determine if a noncompliance occurred. Once that decision is made, the Employer is notified via notice of decision to include restitution if applicable.
 - i. Depending upon the findings of violations, a demand to correct is made. Employer must resolve issues and submit proof of those actions, claimant is initially informed by phone.
 - ii. For restitution, businesses cut checks in the shortfall amount and the City will distribute or employers will do so and provide supportive documentation.
- e) C&C sends a letter finalizing the case and closing it out.

ACTION REQUESTED OF THE CITY COUNCIL

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For questions regarding this supplemental report, please contact Ed Reiskin, Assistant City Administrator at (510) 238-6906.

Respectfully submitted,



Ed Reiskin
Assistant City Administrator

Reviewed by:

William A. Gilchrist, Director, Department of
Planning and Building

Prepared by:

Mike Rivera, Planner II
Bureau of Planning,
Development Planning Division

With input from:

Debbie Barnes, Director,
Contracts & Compliance

Attachments (1):

A: Original City Council Agenda Report, dated February 4, 2019