

## **RESOLUTION NO. 22-242**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA: (1) MAKING, RATIFYING AND AFFIRMING THE CEQA FINDINGS AND ACTIONS OF THE PLANNING COMMISSION RELATED TO CERTIFICATION OF ENVIRONMENTAL IMPACT REPORT (SCH NO. 2021010116) WITH RESPECT TO APPROVAL OF VESTING TENTATIVE TRACT MAP NO. 83157; AND MAKING FINDINGS PURSUANT TO CEQA GUIDELINES SECTIONS 15162-15164, AND (2) MODIFYING, PURSUANT TO CARSON MUNICIPAL CODE SECTION 9173.4(C)(2)(b), THE DECISION OF THE CARSON PLANNING COMMISSION ADOPTING PLANNING COMMISSION RESOLUTION NO. 22-244 WITH RESPECT TO THE CONDITIONS OF APPROVAL OF VESTING TENTATIVE TRACT MAP NO. 83157, RELATED TO A 1,115 UNIT MIXED-USE DEVELOPMENT REFERRED TO AS THE IMPERIAL AVALON MIXED-USE PROJECT**

WHEREAS, on November 21, 2022, following a duly noticed public hearing, the Carson Planning Commission adopted Planning Commission Resolution No. 22-244, "A Resolution of the Planning Commission of the City of Carson: (1) (a) certifying the Environmental Impact Report (SCH No. 2021010116); (b) adopting the proposed Mitigation Monitoring and Reporting Program; (c) adopting the Findings required by CEQA guidelines section 15091; and (d) adopting a Statement of Overriding considerations; (2) approving (a) Site Plan and Design Overlay Review No. 1803-19 and (b) Vesting Tentative Tract Map No. 83157, conditioned upon City Council Approval of General Plan Amendment No. 105-19, Specific Plan No. 21-19 (Imperial Avalon Specific Plan), Development Agreement No. 23-19, and Zone Change No. 188-19, and subject to the Conditions of Approval set forth in Exhibits "B" – "D" hereto; and (3) recommending the City Council Approve (a) General Plan Amendment No. 105-19, (b) Specific Plan No. 21-19 (subject to the Conditions of Approval set forth in Exhibit "D" hereto), Development Agreement No. 23-19, and Zone Change No. 188-19, for a 1,115 unit mixed-use development referred to as the Imperial Avalon Mixed-Use Project" (the "Planning Commission Decision").

WHEREAS, the project that is the subject of the Planning Commission Decision is located at 21207 South Avalon Boulevard in the City, and the conditions of the Planning Commission's approval of Vesting Tentative Tract Map No. 83157 are attached to Planning Commission Resolution No. 22-244 as Exhibit "C" (the "VTTM Conditions"); and

WHEREAS, on November 22, 2022, the project applicant, Imperial Avalon, LLC (the "Applicant") filed a timely appeal of the Planning Commission Decision pursuant to Carson Municipal Code ("CMC") Section 9173.4 (Appeals) of the City's Zoning Ordinance (the "Appeal"). The grounds for the Appeal was based on Condition #48 of the VTTM Conditions, which, as stated in the Appeal, specifically requires the approval and recordation of the Final Map prior to issuance of a building permit for the project. The Appeal states that the condition "is inconsistent with Section 4.7 of the Development Agreement," referring to Development Agreement No. 23-19, which the Planning

Commission recommended for City Council approval as part of the Planning Commission Decision (“DA”). According to the Appeal, “DA Section 4.7 provides additional flexibility by permitting construction to commence on the project Apartment buildings prior to recordation of the Final Map. The DA requires only that the Final Map be recorded prior to issuance of either (1) building permit for the Townhome units and/or (2) certificate of occupancy (as opposed to building permit) for the Apartment buildings.” The Appeal states that the Applicant filed the Appeal to “ensure that the final VTTM conditions of approval are consistent with Development Agreement Section 4.7 and allow for the additional flexibility relative to commencement of construction for the Apartment buildings.”

WHEREAS, the Appeal was complete as filed, and was accepted by the City Clerk on the same date; and

WHEREAS, CMC Section 9173.4(C)(1) requires a public hearing to be conducted on the appeal. Section 9173.4(C)(2) provides that at the conclusion of the public hearing, the Council may: (a) affirm the decision; (b) modify the decision; (c) refer the matter back to the Planning Commission, with instructions; or (d) reverse the decision. Pursuant to CMC Section 9173.4(C)(3), unless referred back to the Planning Commission, the appellate decision shall be supported by written findings. Pursuant to CMC Section 9173.4(D), the Council must act to either affirm, reverse, modify, continue or refer matter back within 60 days of filing of the appeal; and

WHEREAS, on December 6, 2022, the City Council conducted a duly noticed public hearing to consider the Appeal in accordance with CMC Section 9173.4, and thereafter elected to modify the Planning Commission Decision pursuant to CMC Section 9173.49(C)(2)(b), on the terms and based on the findings set forth in this Resolution; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF CARSON, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:**

**Section 1.** The City Council finds that the foregoing recitals are true and correct, and the same are incorporated herein by reference as findings of fact.

**Section 2.** Based upon substantial evidence taken from the record as a whole, and received at the hearing on the Appeal, conducted on November 21, 2022, both oral and written, including the staff report and all attachments thereto, the City Council hereby finds that:

a) Condition No. 48 of the VTTM Conditions, as written, does specifically require the approval and recordation of the Final Map prior to issuance of a building permit for the project, as asserted in the Appeal;

b) DA Section 4.7, as recommended for City Council approval in the Planning Commission Decision, provides, in pertinent part, “Developer shall have the right to commence Project construction of both Apartment buildings within the Project prior to the recordation of an approved final subdivision map No. 83157.

However, the approved final subdivision map must be recorded prior to occurrence of either of the following: (i) issuance of any building permits for the Townhomes; (ii) issuance of a certificate of occupancy for either of the Apartment buildings.” Thus, DA Section 4.7, in its Planning Commission-recommended form, does provide for flexibility by permitting construction to commence on the project Apartment buildings prior to recordation of the Final Map, as asserted in the Appeal;

c) City staff, by imposing VTTM Condition No. 48 with an associated timing requirement of “prior to issuance of building permit,” inadvertently created a conflict with the aforementioned language of DA Section 4.7. DA Section 4.7 represents the negotiated agreement between City staff and the Applicant on this topic, and was recommended for approval by the Planning Commission. Although the DA at Section 5.9 states that Project conditions of approval shall prevail over the DA where the conditions of approval are more restrictive, that was not the intent of City staff here, and the issue was not brought to the attention of the Planning Commission. VTTM Condition No. 48 is an Engineering Division condition of approval. The Community Development Director has conferred with the City Engineer and confirmed that the City Engineer was not aware of DA Section 4.7 when the City Engineer provided VTTM Condition No. 48, and that the City Engineer, having been advised of DA Section 4.7, is now agreeable to a modification to VTTM Condition No. 48 to conform to DA Section 4.7, in light of the other Project conditions of approval ensuring all required street improvements are made prior to occupancy of the project.

d) VTTM Condition No. 48 should therefore be modified to allow the construction flexibility as provided in DA Section 4.7 or, in the event DA Section 4.7 is modified during the Council’s consideration of approval of the project (including the DA, General Plan Amendment No. 105-19, Specific Plan No. 21-19 [Imperial Avalon Specific Plan], and Zone Change No. 188-19) pursuant to the Planning Commission’s recommendation, to defer to the relevant provision of the DA on this topic rather than being more restrictive.

e) The City Council hereby makes, ratifies and affirms the Planning Commission’s CEQA findings and actions as the Council’s own with respect to the approval of Vesting Tentative Tract Map No. 83157.

f) The modifications set forth in this Resolution do not constitute substantial changes in the project or its circumstances or new information of substantial importance, and do not require any revisions to the EIR or preparation of any subsequent EIR pursuant to CEQA Guidelines Section 15162. The EIR, as certified by the Planning Commission Decision and affirmed herein, fully and appropriately assesses the project irrespective of the modifications set forth in this Resolution, and no recirculation is required. No minor additions or changes to the EIR are necessary to make the EIR adequately apply to the project with the modifications set forth in this Resolution, and therefore no supplement to the EIR is necessary pursuant to CEQA Guidelines Section 15163. Further, no addendum to the EIR is necessary pursuant to CEQA Guidelines Section 15164 because no changes or additions to the EIR are necessary based on the modifications set forth in this Resolution.

**Section 3.** Based on the foregoing findings, the City Council hereby modifies, pursuant to CMC Section 9173.4(C)(2)(b), the Planning Commission Decision with respect to the approval of Vesting Tentative Tract Map No. 83157, by making the following modification to VTTM Condition No. 48 (with additions shown in ***bold italics***):

*“Prior to Issuance of Building Permit*

*...*

48. Final Map shall be approved and recorded, ***except as otherwise provided in the Development Agreement (No. 23-19).***”

Note: Note that due to a discrepancy in numbering, this condition of approval is now numbered as VTTM Condition No. 43. Except as provided in this Section, the Planning Commission’s approval of Vesting Tentative Tract Map No. 83157 on the terms and conditions set forth in the Planning Commission Decision is affirmed without modification.

**Section 4.** This Resolution shall be effective immediately upon its adoption. As provided in Code of Civil Procedure §1094.6(b) and Carson Municipal Code §9173.5, any court action or proceeding brought to challenge this Resolution or the findings set forth herein pursuant to Code of Civil Procedure §1094.5 must be filed within 90 days after the date of this Resolution, except that any action or proceeding challenging this Resolution or the findings set forth herein that is within the scope of Carson Municipal Code §9173.5(A) must be filed within 60 days after the date of this Resolution. A copy of this Resolution shall be sent by first class mail to the Applicant and to any person who has filed a written request for notice of this decision pursuant to Carson Municipal Code §9173.32.

**Section 5.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

**PASSED, APPROVED and ADOPTED** this 6<sup>th</sup> day of December, 2022.

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Lula Davis-Holmes, Mayor

APPROVED AS TO FORM:

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Sunny K. Soltani, City Attorney

ATTEST:

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Dr. Khaleah K. Bradshaw, City Clerk