



## Legislation Text

File #: 2022-982, Version: 1

### Report to Mayor and City Council

Tuesday, December 06, 2022

Special Orders of the Day

#### SUBJECT:

**PUBLIC HEARING TO CONSIDER RESOLUTION NO. 22-242 (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.**

#### Body

#### I. SUMMARY

On November 21, 2022, following a duly noticed public hearing, the Carson Planning Commission adopted Planning Commission Resolution No. 22-244, (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").

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”)

On November 22, 2022, Imperial Avalon, LLC (the “Applicant”) filed an appeal of the Planning Commission decision pursuant to Carson Municipal Code (“CMC”) Section 9173.4 (Appeals) of the City’s Zoning Ordinance. The appeal was complete as filed and was accepted by the City Clerk and duly noticed for this public hearing on the same date.

Carson Municipal Code Section 9173.4(C)(2) provides that in acting on an appeal, the City may: (a) Affirm the decision; (b) Modify the decision; (c) Refer the matter back to the body from which the appeal originated, with instructions; (d) Reverse the decision. In addition, CMC 9173.4(C)(3) states that unless the item is referred back to the Planning Commission, the City Council’s decision shall be supported by written findings. Per CMC 9173.4(D), the Council shall, within sixty (60) days of the filing of the appeal, act to either affirm, reverse, modify, continue, or refer the matter back.

Staff believes the appeal has merit for the reasons discussed below, and therefore recommends that the City Council adopt the proposed resolution to modify the Planning Commission Decision based on the appeal pursuant to CMC 9173.4(C)(2)(b).

## **II. RECOMMENDATION**

1. **OPEN** the Public Hearing, **TAKE** public testimony, **CLOSE** the Public Hearing.
2. **ADOPT** 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”.

## **III. ALTERNATIVES**

**TAKE** another action the City Council deems appropriate.

## **IV. BACKGROUND**

The grounds for the appeal were based on Condition No. 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.”

Staff has analyzed the appeal and relevant documentation and determined that VTTM Condition No. 48, 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. Also, 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.

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.

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.

Accordingly, the proposed Resolution (Exhibit No. 4) would make 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 that due to a discrepancy in numbering, this condition of approval is now condition number 43. No other changes would be made to the Planning Commission decision via the proposed Resolution.

## **V. FISCAL IMPACT**

None

## **VI. EXHIBITS**

1. Planning Commission Staff Report from November 21, 2022 (pgs. 5-25)
2. Appeal Application from Imperial Avalon, LLC (pgs. 26-27)
3. Adopted Planning Commission Resolution No. 22-244, with conditions of approval (pgs. 28-63)
4. Proposed City Council Resolution No. 22-242 (pgs. 64-68)

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