



## Legislation Text

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File #: 19-551, Version: 1

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Amendment Number 1 to the Disposition and Development Agreement with The Cove, LLC.

### **RECOMMENDED ACTION (Motion):**

Staff recommends that the Urban Renewal Commission approve The Cove Disposition and Development Agreement Amendment No. 1 to extend the satisfaction or waiver of preconditions date in section 3.1 and the requirements to receive the Urban Renewal Investment in Section 7.2.

### **BACKGROUND:**

At the September 18, 2019 Urban Renewal Commission meeting representatives from The Cove, LLC presented an update on the status of the project. The Urban Renewal Commission tentatively approved amendments to the existing DDA that included the following:

A. The Commission and the Developer wish to extend the timeline of the date to meet the preconditions in **Section 3.1 - Satisfaction or Waiver of Preconditions** of the DDA to May 20, 2020; and

B. The Developer shall return to the Commission no later than February 5, 2020 to provide an update on the status of meeting the outstanding preconditions in Section 3.2 of the DDA, at which time the Commission may choose to begin termination of the DDA should substantial progress towards meeting the preconditions of Section 3.2 has not be made; and

C. The Commission and the Developer agree that the land use submittal fees for the land use application may be reimbursed provided such payment shall occur no later than three hundred sixty (360) days after the Effective Date of the original DDA (November 26, 2018). Three hundred sixty (360) days from the Effective Date of the original DDA is November 21, 2019. Other than the reimbursement to the Developer for the land use application fees, there shall be no additional reimbursement of funds to the Developer, as identified in **Section 7.2 - Urban Renewal Investment**, until all of the preconditions identified in Section 3.2 of the DDA have been met or waived.

The proposed Amendment Number 1 to the Disposition and Development Agreement with The Cove, LLC (attachment 1) has incorporated the changes above.

The following information was provided at the September 18, 2019 Urban Renewal Commission meeting:

At the August 21, 2019 Urban Renewal Commission meeting the Commission requested that the Developer be present at a September meeting to present a project update and address questions (powerpoint presentation included as attachment 1).

At the request of the Commission, the Developer has agreed to amend Section 7.2 to include the following language: *As of the date of this amendment (September 18, 2019) no additional urban renewal investment of the six hundred ninety-five thousand dollars (\$695,000) identified in this*

*section shall be made to the Developer until all of the preconditions identified in Section 3.2 have been met or waived and, as described above, such payment shall occur no later than three hundred sixty (360) days after the Effective Date (November 26, 2018).*

The Developer has requested that the Urban Renewal Commission allow for the reimbursement of the land use application fees once the application has been submitted, which are estimated to be approximately \$70,000. Prior to the Developer submitting the land use application, the Urban Renewal Commission will have approved the application. The proposed reimbursement is a reasonable request considering that the Developer is submitting an application on Urban Renewal property, the Urban Renewal Commission would have approved the land use application submittal and the Disposition and Development Agreement specifically identifies land use fees as a reimbursable expense.

The following information was provided at the August 21, 2019 Urban Renewal Commission meeting. The Cove Disposition and Development Agreement (DDA) was approved on November 26, 2018. Section 3 of the DDA identifies the preconditions necessary to be met in order to proceed with the project.

*Section 3.1 of the DDA states: Satisfaction or Waiver of Preconditions. The "Preconditions" described in Section 3.2 must be satisfied or waived by both parties within two hundred seventy (270) days after the Effective Date of this Agreement. If all the Preconditions are not satisfied within two hundred seventy (270) days, then either party may terminate this Agreement by written notice to the other party, which notice shall be effective twenty (20) days after delivery unless the Preconditions are satisfied or waived during such twenty-day period; provided, however, that a party may not terminate this Agreement for failure of a Precondition if that party is responsible for the delay in satisfying the Precondition, unless that Precondition remains unsatisfied for the number of days of delay added to the two hundred seventy (270) day period. If all of the Preconditions are satisfied or waived by both parties as provided herein, the parties shall proceed with their respective obligations set forth in this Agreement."*

Seven (7) of the eleven (11) preconditions have been met. The outstanding preconditions are:

*3.2.3 Developer shall have submitted the Land Use Approval Applications to the City.*

The Developer has received land use approval for the general land use application for the project. An additional detailed development plan will be submitted for the Phase 2A building and parking lot improvements.

*3.2.4 The Developer shall have approved the Partial Tax Exemption pursuant to Section 7.1.*

The Developer is preparing the initial Vertical Housing Tax Exemption application for submittal to the City.

*3.2.8 Developer shall have provided to the Commission a form of a mortgage loan commitment providing funding sufficient for the construction financing and permanent financing (a "Loan Commitment") of both Phase 2A and the Infrastructure Work and the Commission shall have approved the Loan Commitment.*

The Developer submitted a letter from Berkadia, the financing lender, dated October 24, 2018, indicating that Berkadia has completed the initial loan analysis for the construction of the Cove Apartments in Oregon City and has recommended a \$63,950,000 loan for both the construction and permanent financing of the project. The Developer is working to provide a "Loan Commitment", which

will be reviewed by staff and then brought to the URC for consideration. The "Loan Commitment" will be provided by Berkadia, as the lender, and will identify the conditions that must be met by the Developer for the loan to be funded.

*3.2.9 Developer shall have demonstrated to the Commission in the Commission's commercially reasonable judgement that Developer has adequate cash equity committed to the Project as required by the Loan Commitment sufficient to finance the completion of the Project.*

The Developer will be working to provide this information in conjunction with the "Loan Commitment" requirement of section 3.2.8 above.

The 270-day precondition timeline from the approval of the DDA on November 26, 2018 is August 23, 2019. The Developer and staff have made significant progress in meeting the preconditions as outlined in the DDA. Staff is recommending that Section 3.1 of the DDA be amended to allow an additional one hundred eighty (180) days to complete the preconditions, which would be a total of four hundred fifty (450) days from the effective date of the DDA (November 26, 2018). The new date for the preconditions to be satisfied would be February 19, 2020.

Section 7.2 - Urban Renewal Investment states in part: *The Commission agrees to reimburse Developer for Developer's Phase II Environmental Assessment, design and engineering costs for the Infrastructure, and City land use application fees completed within 350 days of the Effective date, in the total amount of \$695,000 and such payment shall occur no later than 360 days after the Effective Date. In the event the Developer does not purchase the Phase 2A Private Parcels, pursuant to Section 4.1.1, Developer shall deliver to the Commission the entire work product described above and deliver a bill of sale for ownership of such work product to the Commission.*

At the request of the Commission, the Developer has agreed to amend Section 7.2 to include the following language: *As of the date of this amendment (September 18, 2019) no additional urban renewal investment of the six hundred ninety-five thousand dollars (\$695,000) identified in this section shall be made to the Developer until all of the preconditions identified in Section 3.2 have been met or waived and, as described above, such payment shall occur no later than three hundred sixty (360) days after the Effective Date (November 26, 2018).*

To date, the Developer has been reimbursed for \$366,686.28 of eligible expenditures. The Disposition and Development Agreement Amendment No. 1, which would amend section 3.1 of the DDA to allow a total of 450 days for completion or waiver of the preconditions from the effective date of the DDA and the amendment to Section 7.2 to require that all the preconditions be met prior to any additional reimbursement, are included in attachment 2. There are no other amendments to the DDA proposed.