



# ***Agenda Report***

## ***Fullerton City Council***

**MEETING DATE:** MAY 5, 2026

**TO:** CITY COUNCIL / SUCCESSOR AGENCY

**SUBMITTED BY:** SUNAYANA THOMAS, DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

**PREPARED BY:** DAVID LOPEZ, SENIOR PLANNER

**SUBJECT:** APPEAL OF PLANNING COMMISSION DENIAL OF MAJOR SITE PLAN AND VESTING TENTATIVE TRACT MAP TO CONSTRUCT 32 RESIDENTIAL TOWNHOMES AT 111 WEST HERMOSA DRIVE

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### **SUMMARY**

A request to review and act on an appeal of the Planning Commission denial of a Major Site Plan and Vesting Tentative Tract Map to construct 32 residential townhomes on property located at 111 West Hermosa Drive.

### **PROPOSED MOTION**

Adopt the following resolutions to overturn Planning Commission decision and approve the appeal:

Resolution No. 2026-XXX.

RESOLUTION NO. 2026-XXX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AN APPEAL AND OVERTURNING THE PLANNING COMMISSION DENIAL AND APPROVING A MAJOR SITE PLAN TO CONSTRUCT 32 RESIDENTIAL TOWNHOMES INCLUDING FIVE DEED RESTRICTED UNITS FOR LOW-INCOME HOUSEHOLDS PURSUANT TO THE HOUSING ACCOUNTABILITY ACT, GOVERNMENT CODE SECTION 65589.5 ON PROPERTY ZONED R-1-20, ONE-FAMILY RESIDENTIAL (MINIMUM LOT SIZE OF 20,000 SQUARE FEET) LOCATED AT 111 WEST HERMOSA DRIVE AND FINDING THE APPROVAL SUBJECT TO THE INFILL CATEGORICAL EXEMPTION UNDER CEQA GUIDELINES SECTION 15332

Resolution No. 2026-XXX.

RESOLUTION NO. 2026-XXX - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AN APPEAL AND OVERTURNING THE

PLANNING COMMISSION DENIAL AND APPROVING VESTING TENTATIVE TRACT MAP 19342 FOR CONDOMINIUM PURPOSES TO DEVELOP 32 RESIDENTIAL TOWNHOMES ON PROPERTY ZONED R-1-20, ONE-FAMILY RESIDENTIAL (MINIMUM LOT SIZE OF 20,000 SQUARE FEET) LOCATED AT 111 WEST HERMOSA DRIVE AND FINDING THE APPROVAL SUBJECT TO THE INFILL CATEGORICAL EXEMPTION UNDER CEQA GUIDELINES SECTION 15332

#### ALTERNATIVE OPTIONS

- Deny the appeal and uphold the Planning Commission denial of the Major Site Plan and Vesting Tentative Tract Map requests
- Approve the Proposed Motion
- Other options brought by City Council.

#### STAFF RECOMMENDATION

Staff recommends the Proposed Motion.

#### CITY MANAGER REMARKS

None.

#### PRIORITY POLICY STATEMENT

Not applicable.

#### FISCAL IMPACT

None.

#### BACKGROUND AND DISCUSSION

The applicant, City Ventures, submitted a Senate Bill (SB) 330 preliminary application pursuant to Government Code Section 65941.1 on April 10, 2024 which froze all applicable fees and development standards in place at that time. The City did not have a compliant Housing Element at the time of the preliminary application submission, therefore, the project qualifies to utilize “Builder’s Remedy,” pursuant to the Housing Accountability Act.

A “Builder’s Remedy” project is deemed consistent as a matter of law with the City General Plan and Zoning Code. The City must make certain findings to deny a “Builder’s Remedy” project, including that the project will cause “a specific, adverse impact on the public health or safety” based on existing, objective regulations applicable to the project and there is no feasible way to mitigate the impact without rendering the project unaffordable to low and moderate-income households. The project is also entitled to certain incentives, concessions and waivers on development standards under State Density Bonus Law including reduced parking and elimination of utility undergrounding. AB 1893, which became effective January 1, 2025, revised the Builder’s Remedy provisions allowing a project applicant to choose to lower the affordability requirements

from 20 percent to at least 13 percent of the units to be restricted for lower-income households. The applicant revised its project application to provide only 13 percent (five units) for low-income households.

Any housing development that proposes five or more units and provides at least ten percent of the units restricted to lower-income households is eligible for a density bonus as well as reduced parking ratios, waivers and incentives or concessions. Pursuant to AB 1893, the State Density Bonus Law, and the project's scope, the project is entitled to receive three incentives or concessions. As previously stated, the applicant has requested one concession to waive the requirement to underground utilities that provide direct service to the property.

A concession may only be denied if it will: a) not result in identifiable and actual cost reductions, b) have a specific, adverse impact upon the public health and safety and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income housings or c) be contrary to state or federal law. None of these exceptions apply.

Additionally, under the density bonus law, the minimum parking requirements are 1.5 spaces for units with two or three bedrooms and 2.5 spaces for units with four or more bedrooms. Based on the unit counts described above, the project must provide 60 spaces. The proposed project provides 75 spaces including guest parking, exceeding the minimum parking requirements by 25 percent.

The City received a Builder's Remedy project application on August 13, 2024, in accordance with Government Code Section 65941.1(e). The applicant elected in writing on January 16, 2025 [letter inadvertently dated 2024] to utilize Assembly Bill (AB) 1893, revising the application to provide 13 percent affordable units (down from the previously required 20 percent).

#### Planning Commission

The Planning Commission considered Major Site Plan (ZON-2024-0097) and Vesting Tentative Tract Map 19342 (SUB-2024-0004) on February 25, 2026. Planning staff presented the project with a brief overview of the public comments and concerns received. The project applicant presentation an overview of the preliminary designs and modifications made based on the comments received from the neighborhood.

The Planning Commission heard public comment, held discussion between Commissioners and the project applicant and voted 4 – 1 (Opposed: Fleenor) to direct staff to present resolutions denying the project at a future Commission meeting.

The Planning Commission met on March 11, 2026 and held discussion between Commissioners and the City Attorney. Commissioner Tutor moved to re-open the Public Hearing. The motion failed 2 - 3 (In favor: Tutor, Fleenor). Vice Chair Dino made an alternate motion to deny the application and approve the resolutions of denial. The motion passed 3 - 2 (Opposed: Tutor, Fleenor).

#### Appeal

The Appellant, City Ventures, filed an appeal to City Council on March 12, 2026, pursuant to Fullerton Municipal Code (FMC) Section 15.70.060. The Appellant identified the criteria for Builder's Remedy projects including the findings required to deny such project.

The following summarizes the Appellant main points:

*Appellant Comment:* The Appellant submitted the Builder's Remedy project when the City did not have a Housing Element that complied with State Law.

*Staff Response:* This is a correct statement of fact.

*Appellant Comment:* Builder's Remedy projects are not required to comply with underlying General Plan or Zoning designations.

*Staff Response:* This is a correct statement; as noted above, Builder's Remedy projects are deemed consistent as a matter of law with a city General Plan and Zoning Code.

*Appellant Comment:* A City cannot deny Builder's Remedy projects unless necessary due to a specific, adverse public health and safety impact that cannot be mitigated without rendering the project infeasible for affordable housing pursuant to Government Code Section 65589.5(d). A specific adverse impact is defined as a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions, as they existed on the date the application was deemed complete pursuant to Government Code Section 65589.5(j)(1)(A).

*Staff Response:* These are correct statements of statutory requirements applicable to Builder's Remedy projects; as noted above, the City is required to find that the project will cause a "specific, adverse impact on the public health or safety," based on an existing, objective regulation applicable to the project and that there is no feasible way to mitigate the impact without rendering the project unaffordable to low and moderate-income households.

*Appellant Comment:* The Planning Commission's March 11, 2026, denial resolution did not provide evidence in the record to support the concern of safety impacts at the intersection of Hermosa Drive and Harbor Boulevard, therefore, violating State housing law.

*Staff Response:* City Council will determine this issue on appeal – whether City Council should grant or deny the appeal, and if it denies the appeal, whether the required Builder's Remedy findings can be made based on the Planning Commission's findings or any other evidence at the Appeal Hearing.

*Appellant Comment:* The Planning Commission Staff Report did not identify any objective health and safety standards. The City Traffic Engineer stated that the project would improve traffic conditions and make traffic in the area safer.

*Staff Response:* Same issue as above, which is to be determined by City Council at the Appeal Hearing.

#### Staff Recommendations

Staff recommends City Council conduct an Appeal Hearing on the project denial and consider all evidence at the Hearing, including the Planning Commission findings and evidence. Staff recommendation on the project has not changed from the

recommendation in the Planning Commission Staff Report (Attachment 6). Staff recommends City Council make a determination regarding whether the evidence meets the required statutory criteria identified above as to any decision to deny the appeal / Project.

Attachments:

- Attachment 1 – Draft Resolution No. 2026-XXX Major Site Plan / Appeal Approval
- Attachment 2 – Draft Resolution No. 2026-XXX Tentative Tract Map / Appeal Approval
- Attachment 3 – March 12, 2026 Appeal Letter
- Attachment 4 – Project Plans
- Attachment 5 – February 25, 2026 Planning Commission Staff Report
- Attachment 6 – February 25, 2026 Planning Commission Minutes
- Attachment 7 – Planning Commission Resolution No. PC-2026-03
- Attachment 8 – Planning Commission Resolution No. PC-2026-04

cc: City Manager Eddie Manfro