

ORDINANCE NO. 20-2195

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO APPROVING A DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF A NEW 7-STORY, 155 ROOM HOTEL WITH ASSOCIATED SITE AND LANDSCAPING IMPROVEMENTS LOCATED AT 10931 N. DE ANZA BLVD. (APN #326-10-061)

SECTION I: PROJECT DESCRIPTION

Application No.: DA-2018-01
Applicant: De Anza Properties (Sherly Kwok)
Property Owner: Northwest Properties, LP
Location: 10931 N De Anza Blvd. (APN #326-10-061)

SECTION II: FINDINGS FOR DEVELOPMENT AGREEMENT

WHEREAS, the City of Cupertino received an application on March 20, 2018 for a General Plan Amendment, Development Permit, Development Agreement, Architectural and Site Approval, and Use Permit to allow the development of a new 7-story, 155 room hotel with associated site and landscaping improvements and associated environmental review ("Project"); and,

WHEREAS, De Anza Properties has a legal and equitable interest in certain real property consisting of approximately 1.29 acres located within the City and generally bordered by De Anza Blvd. to the east, APN #326-10-058 (Cupertino Inn) to the south, and APN #326-10-066 (Homestead Square) to the west ("Property"), and as more particularly described in Exhibit A of the Development Agreement for the De Anza Hotel Project By and Between City of Cupertino and Northwest Properties ("Development Agreement"); and

WHEREAS, Government Code Sections 65864 through 68569.5 provide the statutory authority for development agreements between municipalities and parties with a fee or equitable interest in real property; and

WHEREAS, Cupertino Municipal Code Sections 19.144.010 *et seq.* establish additional procedures for review and approval of proposed development agreements by the City of Cupertino; and

WHEREAS, in March 2018, De Anza Properties requested that the City consider entering into a Development Agreement for development of the Project; and

WHEREAS, the terms of the Development Agreement include the following community benefits funded by Northwest Properties, LP:

1. Community Amenity Funding of \$500,000 for local transportation facilities, start-up costs for the Transportation Management Association, local public art, and landscaping for public parks, roadways, and medians;
2. Public access to a roof-top lounge;
3. Shuttle service to airports and major employment centers for City residents and employees;
4. Meeting rooms for City and public school functions;
5. Transient occupancy taxes; and
6. Minimum hotel standards.

WHEREAS, the Development Agreement will be consistent with the City's General Plan land use map, as amended and surrounding uses and consistent with the applicable zoning designation; and

WHEREAS, approval of the Development Agreement will provide Northwest Properties, LP with assurances that its development of the Property for the Project can proceed without disruption caused by a change in City planning and development policies and requirements, which assurance will thereby reduce the actual or perceived risk of planning, financing, construction, and use of the development and promote private and public objectives of the development; and

WHEREAS, the Project is described and analyzed in "The De Anza Hotel Project" Public Draft Initial Study ("Draft IS/MND") dated July 2, 2019; and

WHEREAS, the City of Cupertino's Environmental Review Committee at its August 1, 2019 meeting reviewed the Draft IS/MND, received public comments, and voted 5-0-0 to recommend adoption of a Mitigated Negative Declaration ("MND"); and

WHEREAS, based on substantial evidence in the record, on December 10, 2019, the Planning Commission recommended on a 4-0 vote (Saxena Absent) that the City Council adopt the MND for the Project and implement as conditions of approval all mitigation measures within the responsibility and jurisdiction of the City that are identified in the IS/MND, and adopt the Mitigation Monitoring and Reporting Program for the Project prior to taking final action on the Project; and

WHEREAS, on December 10, 2019 the Planning Commission recommended on a 4-0 vote (Saxena Absent) that the City Council approve the General Plan Amendment (GPA-2018-01) for the Project in a form substantially similar to the Resolution presented

(Resolution No. 6890), approve the Development Permit (DP-2018-01) in a form substantially similar to the Resolution presented (Resolution No. 6892), approve the Architectural and Site Approval Permit (ASA-2018-02) in a form substantially similar to the Resolution presented (Resolution No. 6893), approve the Use Permit (U-2018-02) in a form substantially similar to the Resolution presented (Resolution No. 6894), and approve and adopt an ordinance approving a Development Agreement (DA-2018-01) in a form substantially similar to the Ordinance presented; and

WHEREAS, on March 3, 2020, after consideration of substantial evidence contained in the entire administrative record and prior to consideration of the Development Agreement, the City Council on a 4-1 vote (Willey voting no) adopted Resolution No. 20-005 adopting the MND, Resolution No. 20-006 adopting the General Plan Amendment, Resolution No. 20-007 approving the Development Permit, Resolution No. 20-008 approving the Architectural and Site Approval Permit, and Resolution No. 20-009 approving the Use Permit;

WHEREAS, at the March 3, 2020 hearing, the City Council requested that Staff renegotiate the Community Benefits to be provided by the Project sponsor; and

WHEREAS, all necessary public notices having been given as required by the procedural ordinances of the City of Cupertino and the Government Code; and

WHEREAS, on April 7, 2020, upon due notice, the City Council held a public hearing to consider the Development Agreement; and

WHEREAS, the City Council is the decision-making body for this Ordinance;

WHEREAS, prior to taking action on this Ordinance, the City Council exercised its independent judgment in carefully considering the information in the IS/MND and finds that the scope of this Ordinance falls within the adopted Mitigated Negative Declaration because the proposed actions to be taken under the Development Agreement that have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment have been examined in the IS/MDN; therefore, no recirculation of the IS/MND is required; and

WHEREAS, Resolution No. 20-007 approving the Development Permit, Resolution No. 20-008 approving the Architectural and Site Approval Permit, and Resolution No. 20-009 approving the Use Permit are each conditioned on the Development Agreement taking effect; and

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council, having considered the notice of the public hearing to consider the Development Agreement, the staff report to the City Council for the meeting of April 7, 2020, evidence received at the public hearing, all exhibits, testimony, information, and other evidence submitted in the record of this proceeding, finds as follows:

A. The proposed Development Agreement is consistent with the objectives, policies, general land uses, and programs specified in the General Plan, as amended.

B. The proposed Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Project is located.

C. The proposed Development Agreement conforms with and will promote public convenience, general welfare, and good land use practice.

D. The proposed Development Agreement will not be detrimental to the health, safety, or general welfare.

E. The proposed Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

F. The proposed Development Agreement will promote and encourage the development of the Project by providing protections to the Project sponsor against changes in City regulations prior to completion of construction of the Project.

Section 3. The City Council hereby approves the Development Agreement in the form attached as Exhibit DA-1 subject to such minor technical conforming changes as may be approved by the City Attorney.

Section 4. This approval is based on the City Council's independent judgment in consideration of and reliance on the IS/MND and in accordance with the plans, details, and descriptions contained therein, and on the Resolution adopting the IS/MND.

Section 5. The City Council authorizes the City Manager to execute the Development Agreement on behalf of the City.

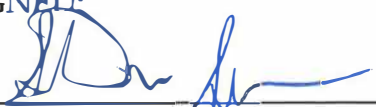




Section 6. The City Council directs the Director of Community Development to file a Notice of Determination with the Santa Clara County Recorder in accordance with the California Environmental Quality Act of 1970 (Public Resources Code Section 21000 *et seq.*) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) .

Section 7. This Ordinance shall be of no force and effect unless and until General Plan Amendment GPA-2018-01 becomes effective. The Development Agreement shall not take effect until this Ordinance takes effect and the Development Agreement is signed by all parties.

INTRODUCED at a Regular Meeting of the Cupertino City Council on the 7th day of April 2020, AND ENACTED at a regular meeting of the Cupertino City Council on the 21st day of April, 2020, by the following roll call vote:

Members of the City Council

AYES: Scharf, Paul, Chao, Sinks
 NOES: Willey
 ABSENT: None
 ABSTAIN: None

SIGNED:  Steven Scharf, Mayor City of Cupertino	 Date
ATTEST:  Kirsten Squarcia, City Clerk	5/19/2020 Date
APPROVED AS TO FORM:  Heather Minner, City Attorney	 Date

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, KIRSTEN SQUARCIA, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 20-2195, which was enacted on April 21, 2020, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of May 2020.



KIRSTEN SQUARCIA, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California