

ORDINANCE NO. 16-2144

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A DEVELOPMENT AGREEMENT BY AND BETWEEN THE
CITY OF CUPERTINO AND IAC AT CUPERTINO LLC, FOR THE
HAMPTONS PROJECT LOCATED AT 19500 PRUNERIDGE AVENUE**

WHEREAS, IAC at Cupertino LLC, a Delaware limited liability corporation, ("IAC") has a legal and equitable interest in certain real property consisting of approximately 12.44 acres located within the City of Cupertino ("City") more particularly described and depicted in Exhibits A and B of the Development Agreement (defined below) ("Property"); and

WHEREAS, the Property is currently developed with 342 residential apartments that are owned and operated by IAC; and

WHEREAS, on or about May 28, 2015, IAC applied for various approvals including a Development Permit (DP-2015-04), an Architectural and Site Approval Permit (ASA-2015-13), a Use Permit (U-2015-05), a Tree Removal Permit (TR-2015-21), and a Development Agreement (DA-2015-01) to redevelop its existing 342 unit apartment community on the Property with 942 apartment homes, approximately 32,000 square feet of resident amenity space, and associated facilities and infrastructure ("Project"); 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 ("CMC") Section 19.144.010 et seq., establishes additional procedures for review and approval of proposed development agreements by the City of Cupertino ("City"); and

WHEREAS, the City and IAC have negotiated a development agreement for the Project attached hereto as Exhibit 1 ("Development Agreement"); and

WHEREAS, approval of the Development Agreement will provide IAC with assurances that its development of the Property in connection with 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 and proceeding with construction and use of the development and promote the achievement of the private and public objectives of the development; and

WHEREAS, the terms of the Development Agreement include the following community benefits funded by IAC:

1. Civic facilities, \$7,000,000

2. Extend reclaimed water line for potable water conservation, \$1,800,000
3. Wolfe Interchange project, \$7,000,000
4. Santa Clara Unified School District, \$2,400,000. In 1997, the property was mapped and recorded in the Santa Clara Unified School District service boundaries.
5. Transportation Demand Association set-up, \$250,000
6. Transportation Demand Association operations, \$50,000 per year

WHEREAS, the Development Agreement includes terms regarding affordable housing relocation agreement, affordable housing agreement and declaration of restrictive covenants, existing impact fees, transportation demand management program and annual review form; and

WHEREAS, the Project is the subject of a Mitigated Negative Declaration ("MND") prepared pursuant to the California Environmental Quality Act ("CEQA") (Public Resources Code section 21000 et seq.); and

WHEREAS, the Planning Commission on May 10, 2016 recommended to the City Council adoption of the MND, and approval of the Development Permit, the Architectural and Site Approval Permit, the Use Permit, the Tree Removal Permit, and the Development Agreement, with the recommendation to negotiate the extension of the term of the original affordable housing agreement for the Project and consider a reduction in housing impact fees in exchange for additional affordable units by adoption of Resolutions Nos. 6802, 6803, 6804, 6805, 6806; and

WHEREAS, the proposed Development Agreement was amended to extend the term of the original affordable housing agreement and to add additional affordable units to the Project, for a total of 71 affordable units, with a reduction in the housing impact fees.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

That after careful consideration of the facts, exhibits, testimony and other evidence submitted in this matter, the City Council based upon the findings described above, the public hearing record, the Minutes of Planning Commission Meeting of May 10, 2016, the Minutes of the City Council Meeting of June 21, 2016, and subject to the conditions specified below:

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 evidence received at the public hearing duly noticed and held for said proposed Development Agreement, finds that the community benefits outlined in the recitals are consistent with the General Plan because these benefits contribute to the quality of life and general livability for those who live and/or work in Cupertino. The proposed contributions can be set aside for the future provision of community

amenities including transportation improvements, civic facilities, schools, water conservation, affordable and/or special needs housing. As Cupertino's resident and worker population increase, additional amenities will be necessary to maintain and improve the livability of the community. The Community Benefit Program is one of the key tools the City will use to help finance and achieve those amenities that maintain and increase quality of life. In addition to the community benefits through the development agreement, the proposed application does not request any General Plan Amendments and is consistent with the General Plan and Housing Element development standards. Therefore, the City Council further finds that:

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

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 is in conformity 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 a greater degree of requisite certainty.

Section 3. The City Council hereby approves the Development Agreement. This approval is based on the City Council's consideration of and reliance on the MND and in accordance with the plans, details and descriptions contained therein, and in the Resolution adopting the MND. The City Manager is hereby authorized to execute the Development Agreement, subject to such minor or technical revisions as may be approved by the City Manager and City Attorney.

Section 4. This Ordinance shall be effective thirty (30) days following its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 21st day of June 2016, and ENACTED at a regular adjourned meeting of the City Council of the City of Cupertino the 5th day of July, 2016, by the following vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Savita Vaidhyanathan
Vice Mayor, City of Cupertino