

ORDINANCE NO. 19-2186

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF A
NEW 5-STORY, 185 ROOM HOTEL WITH ASSOCIATED SITE AND LANDSCAPING
IMPROVEMENTS LOCATED AT 10801 AND 10805 NORTH WOLFE ROAD (APN:
316-45-017 AND 316-05-56)

SECTION I: PROJECT DESCRIPTION

Application No.: DA-2017-01
Applicant: Kimco Realty (Michael Strahs)
Property Owner: Cupertino Village, LP
Location: 10801 and 10805 North Wolfe Road (APN: 316-45-017 and 316-05-56)

SECTION II: FINDINGS FOR DEVELOPMENT AGREEMENT

WHEREAS, the City of Cupertino received an application on December 8, 2017 for a General Plan Amendment, Development Permit, Development Agreement, Architectural and Site Approval, Use Permit, and Tree Removal permits to allow the development of a new 5-story, 185 room hotel with associated site and landscaping improvements, and associated environmental review ("Project"); and,

WHEREAS, Cupertino Village, LP has a legal and equitable interest in certain real property consisting of approximately 1.72 acres located within the City and generally bordered by North Wolfe Road to the east, Pruneridge Avenue to the south, APN #316-45-016 (Arioso Apartments) to the west, and APN #316-05-056 (Cupertino Village Shopping Center) to the north, as more particularly described in Exhibit A, the Development Agreement ("Property"); 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 § 19.144.010 et seq., establishes additional procedures for review and approval of proposed development agreements by the City of Cupertino; and

WHEREAS, in December 2017, Cupertino Village, LP 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 Cupertino Village, LP:

1. Community Amenity Funding, \$1,850,000

WHEREAS, the Development Agreement will include additional terms regarding transportation demand management program, preferential hiring, shuttle service, meeting rooms, reduced rates, internships, transient occupancy tax, and upscale hotel; and

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

WHEREAS, approval of the Development Agreement will provide Cupertino Village, LP 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 project is additionally described and analyzed in the May 30, 2019 "The Cupertino Village Hotel Project" Final Draft Initial Study ("Draft IS/MND"); and

WHEREAS, on December 13, 2018, prior to making any recommendation regarding the adoption of the Draft IS/MND, the City of Cupertino's Environmental Review Committee held a duly noticed public hearing to receive public testimony where it reviewed and considered the information contained in the Draft IS/MND, voted 5-0-0 to recommend that the City Council to adopt the Draft IS/MND (EA-2017-06) and mitigation measures with their motion; and

WHEREAS, the necessary notices were given and the comment period for the application was provided as required by the Procedural Ordinance, Chapter 19.12 of the City of Cupertino's Municipal Code, and the Planning Commission has held at least one public hearing in regard to this application; and

WHEREAS, on June 11, 2019, the Planning Commission, after considering the administrative record and the public hearing, exercised its independent judgment and recommended adoption of the Final Draft IS/MND (EA-2017-06) for the Project on a 4-0-1 vote, which incorporated all the identified mitigation measures as conditions of approval for the Project prior to taking final action on the Project; and

WHEREAS, on June 11, 2019 the Planning Commission recommended on a 4-0-1 vote that the City Council approve the General Plan Amendment (GPA-2017-05), in substantially similar form to the Resolution presented (Resolution no. 6876), approve the Development Permit (DP-2018-04) in substantially similar form to the Resolution presented (Resolution No. 6877), approve the Architectural and Site Approval Permit (ASA-2017-09) in

substantially similar form to the Resolution presented (Resolution No. 6879), approve a Use Permit (U-2018-03) in substantially similar form to the Resolution presented (Resolution No. 6881), approve the Tree Removal Permit (TR-2017-46) in substantially similar form to the Resolution presented (Resolution no. 6880) and approve a Development Agreement (DA-2017-01) in substantially similar form to the Ordinance presented (Resolution No. 6878); and

WHEREAS, on July 16, 2019, upon due notice, the City Council has held at least one public hearing to consider the Development Agreement; and

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

WHEREAS, after consideration of evidence contained in the entire administrative record, on July 16, 2019, the City Council adopted Resolution No. [###] adopting the Final Mitigated Negative Declaration, Mitigation Measures, and adopting a Mitigation Monitoring and Reporting Program; and

WHEREAS, prior to taking action on this Ordinance, the City Council has exercised its independent judgment in carefully considering the information in the Final Mitigated Negative Declaration and finds that the scope of this Ordinance falls within the adopted Mitigated Negative Declaration, in that the aspects of the Development Agreement proposed in this Ordinance 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 Final Mitigated Negative Declaration; therefore, no recirculation of the Final Mitigated Negative Declaration is required; and

WHEREAS, after a duly noticed public hearing on July 16, 2019, after consideration of evidence contained in the entire administrative record, prior to consideration of the Development Agreement, the City Council adopted Resolution No. [####] adopting the Draft IS/MND, Resolution No. [####] adopting the General Plan Amendment, Resolution [####] approving the Development Permit, Resolution no. [####] approving the Architectural and Site Approval Permit, Resolution no. [####] approving the Use Permit and Resolution no. [####] approving the Tree Removal Permit;

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, approval of the Development Agreement will provide Cupertino Village, LP 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

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 staff report to the City Council for the meeting of July 16, 2019, evidence received at the public hearing duly noticed and held for the proposed Development Agreement, and all other facts, exhibits, testimony, information and other evidence submitted in this matter or 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 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 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 judgement in the consideration of and reliance on the Final IS/MND and in accordance with the plans, details and descriptions contained therein, and in the Resolution adopting the Final IS/MND.

Section 5. The City Council hereby 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 CEQA guidelines.

Section 7. This Ordinance shall be effective thirty (30) days following its adoption.

INTRODUCED at a Regular Meeting of the Cupertino City Council on 16th day of July, 2019, AND ENACTED at a regular meeting of the Cupertino City Council on the 20th day of August, 2019, by the following roll call vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	 _____ Date
ATTEST: _____ Grace Schmidt, City Clerk	 _____ Date
APPROVED AS TO FORM: _____ Heather Minner, City Attorney	 _____ Date