

ORDINANCE NO. 16-2148

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING A DEVELOPMENT AGREEMENT BY AND AMONG THE CITY
OF CUPERTINO, CUPERTINO 10145, LLC, AND MARINA PLAZA LLC, FOR
THE MARINA PLAZA PROJECT AT 10122 BANDLEY DRIVE AND 10145
NORTH DE ANZA BOULEVARD

WHEREAS, Marina Plaza, LLC, a California limited liability company, ("Marina Plaza") has a legal and equitable interest in certain real property commonly known as 10122 Bandley Drive (APN 326-32-066) located within the City of Cupertino ("Residential Parcel") as more particularly described and depicted in Exhibits A-1 and B of the Development Agreement attached hereto as Exhibit 1 ("Development Agreement"); and

WHEREAS, Cupertino 10145, LLC, a California limited liability company ("Cupertino 10145") has a legal and equitable interest in certain real property commonly known as 10145 North De Anza Boulevard (APN 326-34-043) located in the City of Cupertino ("Hotel Parcel") as more particularly described and depicted in Exhibits A-2 and B of the Development Agreement; and

WHEREAS, the Residential Parcel and the Hotel Parcel (collectively the "Property") are currently developed with two commercial buildings jointly operated by Cupertino 10145 and Marina Plaza (collectively "Developer"); and

WHEREAS, on or about September 3, 2015, De Anza Ventures, LLC, a two member California limited liability company whose members consist of Cupertino 10145 and Marina Plaza ("De Anza Ventures"), applied, with the consent of Developer and on Developer's behalf, for various approvals including a Development Permit (DP-2015-05), an Architectural and Site Approval (ASA-2015-22), a Use Permit (U-2015-06), a Heart of the City Exception (EXC-2016-03), a Fence Exception (EXC-2016-05), a Tree Removal Permit (TR-2016-14), and a Development Agreement (DA-2016-01) to redevelop the Property by constructing a 122-room full service neighborhood business hotel on the Hotel Parcel, and two mixed-use buildings with approximately 22,600 square feet of commercial space and 188 apartments on the Residential Parcel, with associated on-site and off-site improvements (collectively the "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 Developer have negotiated a Development Agreement for the Project, to which De Anza Ventures has consented; and

WHEREAS, approval of the Development Agreement will provide Developer 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 Developer:

1. Annual monetary contributions to Fremont Union High School District and Cupertino Union School District totaling approximately \$64,000 per year
2. Use of five hotel rooms per year and the residential community room by the Fremont Union High School District and Cupertino Union School District at no cost
3. A one time payment of \$50,000 to establish a Transportation Management Association
4. Annual contributions of \$20,000 to the Transportation Management Association for operations
5. Public Improvements, including traffic signal modifications, bicycle and pedestrian lanes, and a bus stop, at an estimated cost of \$225,000
6. Sales Tax Point of Sale Designation
7. Use of hotel conference rooms by the City for up to twelve days per year at no cost to the City.
8. Construction of sixteen units of affordable housing to be occupied exclusively by, and rented to, households of very low income for not less than fifty-five years

WHEREAS, the Development Agreement includes terms regarding an affordable housing agreement and declaration of restrictive covenants, existing impact fees, transportation management program and annual review forms; 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 July 26, 2016 recommended to the City Council adoption of the MND, and approval of the Development Permit, Architectural and Site Approval Permit, Use Permit, Heart of the City Exception, Fence Exception, Tree Removal Permit, and Development Agreement by adoption of Resolution Nos. 6809, 6810, 6811, 6812, 6813, 6814; and

WHEREAS, at the first reading of this Ordinance, the City Council modified this approval and the Development Agreement as follows: (i) included two additional moderate-income

affordable units within the Project, for a total of eighteen affordable units, with a reduction in the housing and park impact fees; (ii) included universal access requirements for no fewer than six units that Developer will make its best effort to design as lawful senior units; and (iii) modified section 5.1.1 to ensure updated terms of agreement with Fremont Union High School District and Cupertino Union School District are incorporated.

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 recitals described above, the public hearing record and the Minutes of Planning Commission Meeting of July 26, 2016, and subject to the conditions specified below, ordains 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 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, schools, and affordable housing. As Cupertino's resident and worker populations 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, acknowledge, and record 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 6th day of September 2016, and ENACTED at regular adjourned meeting of the City Council of the City of Cupertino the 20th day of September 2016, by the following vote:

Vote: Members of the City Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Barry Chang, Mayor, City of Cupertino