

ORDINANCE NO. 1611

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW AND 369 NORTH WHISMAN ASSOCIATES, L.P. AND 464 ELLIS STREET ASSOCIATES, L.P. FOR THE PROPERTIES AT 369 NORTH WHISMAN ROAD AND 464 ELLIS STREET

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings and Purpose.

The City Council of the City of Mountain View does hereby find as follows:

1. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 to 65869.5, authorizing municipalities to enter into development agreements in connection with the development of real property within their jurisdiction by qualified applicants with a requisite legal or equitable interest in the real property which is the subject of such development agreement.

2. The purpose of Government Code Sections 65864 to 65869.5 is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations. As authorized by Governmental Code Section 65865(c), the City adopted Ordinance No. 2094 on November 9, 1994, establishing the procedures and requirements for consideration of development agreements within the City.

3. 369 WHISMAN ASSOCIATES, L.P., a California Limited Partnership (the "Applicant") is the owner of certain real property known as 369 North Whisman Road through 399 North Whisman Road in the City of Mountain View, California (the "Property"). 464 ELLIS STREET ASSOCIATES, L.P., a California Limited Partnership ("464 Ellis Street"), is the owner of certain real property that is adjacent to the Property and is commonly known as 464 through 468 Ellis Street in the City of Mountain View (the "Ellis Street Property"). The Ellis Street Property is not a part of the Property, but through an agreement between Applicant and 464 Ellis Street, the Ellis Street Property and the Property currently function in a coordinated manner. Both the Property and the Ellis Street Property are subject to the Transit-Oriented Development Permit and the Planned Unit Development Permit for the Project (defined below), and are treated as a single site for purposes of the Project. 464 Ellis Street is, therefore, a party to the Development Agreement for the limited purpose of joining in and being bound by certain sections of the Development Agreement.

4. The Applicant is proposing to build two office buildings one of approximately 70,846 square feet and the other of approximately 109,927 square feet, together with two four-level parking structures containing approximately 930 parking stalls, remove 22 Heritage trees, a tentative map to create 13 parcels on the Project site, certain pedestrian and bicycle improvements, and associated site improvements on the Property (the "Project").

5. On September 7th, 2011, after conducting a duly noticed public hearing pursuant to City Code Section A 36.80, the Zoning Administrator recommended that the proposed terms of a Development Agreement be approved by the City Council.

6. On September 27, 2011, the City Council adopted the Transit-Oriented Development Permit, Planned Unit Development Permit and Heritage Tree Removal

Permit, adopted a Mitigated Negative Declaration for the Project, which define the conditions of approval for the Project and which indicate that with mitigation measures, the Project will not have a significant impact on the environment (the "Development Approvals").

7. On September 27, 2011, the City Council determined that the Development Agreement will not have a significant effect on the environment since the terms of the Development Agreement do not change the physical properties of the Project and because the Council adopted a Mitigated Negative Declaration that determined the Project, with mitigation measures, would not create any significant environmental impacts. The City Council, based on the required findings listed in City Code Section A 36.76.030, determined that the Development Agreement: (i) is consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Limited Industrial Transit Zone (ML-T); (ii) is compatible with the uses authorized in, and the regulations prescribed for the ML-T Zone; (iii) is in conformity with public convenience, general welfare and good land use practice; (iv) will not be detrimental to the health, safety and general welfare of the community; (v) will not adversely affect the orderly development of property or the preservation of property values; (vi) is needed by the Applicant due to the complexity, cost and infrastructure requirements for the development; and (vii) is advantageous to and benefits the City. For these reasons, the City Council approved entering into the Development Agreement with the Applicant for the Project.

8. The City has determined that the Project is a development for which a Development Agreement is appropriate. A Development Agreement will improve the potential for the Project to be constructed in an orderly fashion, along with the significant Project benefits such as the financial contributions by the Applicant and otherwise achieve the goals and purposes of City Code Section A 36.76 (Development Agreement section).

9. The Applicant has committed to develop, cause to be developed or contribute to infrastructure and other improvements, as well as Project features and fees, to accommodate this Project, as well as other significant public benefits as described in the Development Agreement dated September 27, 2011.

10. In exchange for significant public benefits of the Project and the infrastructure improvements required for the Project, the Applicant desires to receive assurances that the City shall grant permits and approvals required for the development of the Project in accordance with procedures provided by law and in this Development Agreement, and that the Applicant may proceed with the Project in accordance with existing City laws, with extended expiration dates for entitlements up to ten (10) years from the Commencement Date as defined in the Development Agreement. In order to effectuate these purposes, the parties desire to enter into this Development Agreement.

Section 2. The City Council finds that entering into that certain Development Agreement entitled, "[...] between the CITY OF MOUNTAIN VIEW and 369 WHISMAN ASSOCIATES, L.P., and 464 ELLIS STREET ASSOCIATES, L.P.," hereafter is consistent with the City's General Plan and the City's Zoning Ordinance, and provides substantial public benefits to persons residing or owning property outside the boundary of the Property and beyond the exactions for public benefits required in the normal development review process under Federal, State or local law. The Council further finds that the Development Agreement is in compliance with Government Code Section 65867.5 and, therefore, may be approved.

Section 3. The City Council hereby approves and adopts the Development Agreement dated September 27, 2011.

Section 4. The City Council authorizes and directs the City Manager to execute the Development Agreement.

Section 5. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption .

Section 6. If any section , subsection , sentence , clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section , subsection , sentence , clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 7. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction and a list of the places where copies of the proposed ordinance are posted .

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View , duly held on the 27th day of September, 2011, and thereafter adopted at the Regular Meeting of said Council, duly held on the 11th day of October, 2011, by the following roll call vote:

A YES:	Council members Abe-Koga, Bryant, Inks, Means and Vice Mayor Kasperzak
N O E S:	Council member Macias and Mayor Siegel
A B S E N T:	N one
N O T V O T I N G:	N one
A T T E S T:	A P P R O V E D:

_____ LORRIE BREWER, M M C CITY CLERK	_____ JAC SIEGEL MAYOR
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I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 11th day of October by the foregoing vote, and was published in the San Jose Post Record by reference on the 7th day of October, 2011, and posted in three prominent places in said City .

City Clerk
City of Mountain View