

ORDINANCE NO. 1980

AN ORDINANCE OF THE CITY OF SAN RAFAEL APPROVING AN AMENDMENT (ZO18-003) TO SAN RAFAEL MUNICIPAL CODE SECTION 14.16.190.A (HEIGHT BONUS) TO ESTABLISH A NEW 20-FOOT HEIGHT BONUS FOR THE 999 3RD STREET PROPERTY

WHEREAS, in 1992, the City of San Rafael adopted Section 14.16.190 of Title 14 (Zoning Ordinance) of the San Rafael Municipal Code (SRMC) via Ordinance No. 1625; and

WHEREAS, on October 10, 2018, BioMarin Pharmaceutical (BioMarin) and Whistlestop/Eden Housing submitted project applications to the City of San Rafael Community Development Department for a General Plan Amendment (GPA18-001), Planned Development (PD) Rezoning (ZC18-002), Zoning Ordinance Text Amendment (ZO18-003), Development Agreement (DA19-001), Master Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Small Subdivision (S18-001), and Sign Program Amendment (SP18006) for the development of two 72-foot tall, four-story Research and Development buildings and a 67-unit, 70-foot tall, six-story senior center and affordable senior housing building on a 133,099 sq. ft. parcel at 999 3rd Street; and

WHEREAS, the maximum height bonus for development in the Second/Third Mixed Use (2/3MUE) District is 12 feet based on the provision of the following public amenities;

- a. Affordable housing, consistent with SRMC Section 14.16.030 (Affordable housing);
- b. Public parking, providing it is consistent with the downtown design guidelines;
- c. Skywalks over Second or Third Streets, with the approval of the traffic engineer, and the recommendation of the design review board;
- d. Mid-block passageways between Fourth Street and parking lots on Third Street, with the recommendation of the design review board that the design is attractive and safe; and

WHEREAS, the project application for the total BioMarin development includes a request to amend SRMC Section 14.16.190 to increase the allowable maximum height bonus for the 118,099 sq. ft. BioMarin portion of the 999 3rd Street property from 12 feet to 20 feet based on the provision of one or more of the following public amenities:

- a. Affordable housing (minimum 60 units);
- b. Privately owned public plaza (5,000 sq. ft. or more in size);
- c. Community facility (e.g. senior center, 10,000 sq. ft. or more in size);
- d. Pedestrian crossing safety improvements at adjacent intersections;
- e. Donation of funds for development of bike lanes; and

WHEREAS, the proposed request for additional height bonus requires an amendment to the General Plan (Exhibit 10 Height Bonus) and the City Council has approved that General Plan Amendment in conjunction with the review of the planning applications for the proposed project; and

WHEREAS, following the initial filing of the BioMarin/Whistlestop/Eden Housing planning applications, the City commenced with environmental review of the project. Consistent with the California Environmental Quality Act (CEQA) Guidelines and the City of San Rafael Environmental Assessment Procedures Manual, the appropriate steps were followed to complete environmental review of the project, which included: a) the publication of a Notice of Preparation (NOP) in February 2019 for the purpose of scoping the topic areas of study for the preparation of an Environmental Impact Report; b) the preparation and publication of a Draft Environmental Impact Report (DEIR) in August 2019, which included a 45-day public review

process and Planning Commission public hearing for commenting on the DEIR; and c) the preparation of a Final Environmental Impact Report (FEIR) by responding to all comments made and submitted on the DEIR; and

WHEREAS, the FEIR assesses the environmental impacts of the proposed amendment to San Rafael General Plan 2020 to allow for the maximum Height Bonus for the subject property. The FEIR finds that the proposed amendment to the General Plan will not result in a significant impacts, resulting from the change in height bonus provisions and would not be in potential conflict with San Rafael General Plan 2020 Land Use Element Land Use Element Policies LU-23 (*Land Use Map and Categories*), LU-10 (*Planned Development*), LU-9 (*Intensity of Nonresidential Development*), LU-14 (*Land Use Compatibility*), Neighborhood Element Policies NH-15 (*Downtown Vision*), NH-16 (*Economic Success*), NH-38 (*Lindero Office District*) and NH-8 (*Parking*), which are adopted for the purpose of avoiding or mitigating the physical, environmental effect of new development; and

WHEREAS, the FEIR states that there is a conflict with the San Rafael General Plan 2020 Land Use Element Policy LU-2 (*Development Timing*) and Circulation Element Policy C-5 (*Traffic Level of Service*), because of the significant and unavoidable traffic impacts to the local circulation network, which would result from the proposed project, however, these are not related to the additional height of the buildings, but from the intensity of the use; and

WHEREAS, in considering the application to amend SRMC Section 14.16.190, the City Council has reviewed and considered the proposed project benefits against the unavoidable, adverse environmental effects from the impacts to the circulation network. By separate resolutions, consistent with CEQA Guidelines Section 15063 and consistent with San Rafael General Plan 2020 Circulation Element Policy C-5D (*Evaluation of Project Merits*) and Program C-5c (*Exception Review*), the City Council has: 1) certified the FEIR; and 2) adopted CEQA Findings of Fact; and Statement of Overriding Considerations and approved an Exception to the Circulation Element Policy C-5 (*Level of Service*), and a Mitigation Monitoring and Reporting Program (MMRP) to ensure that required mitigation measures are incorporated into project action; and

WHEREAS, on January 28, 2020, the Planning Commission held a duly noticed public hearing on the Project, including this Zoning Ordinance Text Amendment (ZO18-003), along with a General Plan Amendment (GPA18-001), Planned Development (PD) Rezoning (ZC18-002), Development Agreement (DA19-001), Master Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Small Subdivision (S18-001) and Sign Program Amendment (SP18-18-006), accepting all oral and written public testimony and the written report of the Community Development Department Planning staff and closed said hearing on that date; and

WHEREAS, on January 28, 2020, the Planning Commission adopted Resolution No. 20-04, recommending to the City Council approval of the proposed amendment to SRMC Section 14.16.190; and

WHEREAS, on February 28, 2020, a Notice of Availability for the FEIR/Response to Comments was mailed to interested persons and property owners and occupants within 500 feet of the property and to all responsible, trustee and other public agencies that commented on the DEIR, informing them of the City Council hearing for final action. A Notice of Availability was also published in the Marin Independent Journal on Saturday, February 29, 2020 and the site was posted with public hearing signs; and

WHEREAS, on March 23, 2020, the City Council held a duly noticed public hearing to review the proposed amendment to the Zoning Ordinance and considered all oral and written public testimony and the written report of the Community Development Department; and

WHEREAS, on March 23, 2020, by adoption of separate two resolutions, the City Council certified the FEIR, adopted CEQA findings of fact, adopted a statement of overriding consideration and approved the Mitigation Monitoring and Reporting Program (MMRP); and

WHEREAS, on March 23, 2020, the City Council, by adoption of separate Resolutions, approved a General Plan Amendment (GPA18-001), Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Small Subdivision (S18-001), and Sign Program Amendment (SP18-006); and

WHEREAS, the City Council makes the following findings, pursuant to SRMC Section 14.27.060 for adoption of the amendment to SRMC Section 14.16.190 set forth in Exhibit A, attached and incorporated herein by reference:

1. The proposed amendment would be generally consistent with the related elements, goals, policies or programs of the San Rafael General Plan 2020 in that:
 - a. Although the proposed amendment conflicts with San Rafael General Plan 2020 Land Use Element Policy LU-2 (*Development Timing*) and Circulation Element Policy C-5 (*Traffic Level of Service*), which are adopted for the purpose of avoiding or mitigating a physical, environmental effect associated with traffic, the Planning Commission has determined, through adoption of a separate resolution of CEQA Findings of Fact and Statement of Findings of Overriding Consideration, that the benefits of the General Plan amendment outweigh the unavoidable, adverse environmental effects of the action. These findings conclude that the amendment would be consistent with and implement Circulation Element Policy C-5D (*Evaluation of Project Merits*) and Program C-5c (*Exception Review*), which acknowledge that the City Council may approve an action that would exceed the LOS standards set by Policy C-5, if the City Council finds that the benefits of the project to the community outweigh the traffic impacts. The findings in the resolution approving the General Plan Amendment are reaffirmed herein to support this action to amend the San Rafael Zoning Ordinance.
 - b. This Ordinance would be consistent with and implement San Rafael General Plan 2020 Neighborhood Element Program NH-40, which encourages the redevelopment of the project site with a mix of uses that would also extend the uses of the San Rafael Corporate Center.

As drafted, overall, the amendment would be consistent with: a) Neighborhood Element Policy NH-40 (*Second Third Mixed Use District*) and NH-41 (*Second Third Mixed Use District Design Considerations*), by promoting a high quality mixed-use development in the downtown designated areas; b) Economic Vitality Element Policies EV-2 (*Seek, Retain and Promote Businesses that Enhance San Rafael*), EV-4 (*Local Economic and Community Impacts*), EV-8 (*Diversity of our Economic Base*), and EV-13 (*Business Areas*) by broadening, with limited application, the uses that are permitted in areas that are designated for general commercial and office land uses.

- c. The public health, safety and general welfare are served by the adoption of the proposed amendment to San Rafael Municipal Code, which would modify the permitted maximum Height Bonus for the portion of the 999 3rd Street property to be included in the newly modified San Rafael Corporate Center PD District (PD-1936) in that:
 - d. This Ordinance would be consistent with and implement San Rafael General Plan Land Use Element LU-9 (*Intensity of Nonresidential Development*), with an appropriate development intensity based on consistency with the following factors: site resources and constraints, traffic and access, potentially hazardous conditions, adequacy of infrastructure, and City design policies.
 - e. This Ordinance would be consistent with and implement San Rafael General Plan Neighborhoods Policy NH-40 (*Second Third Mixed Use District*). Program NH-40, which is specific to the Second/Third Mixed Use District in the downtown area, as it encourages the redevelopment of the project site with a mix of uses that would also extend the uses of the SRCC.
 - f. This Ordinance would permit a project that will provide desired public benefits and amenities, including: Affordable housing (minimum 60 units), a privately-owned public plaza (5,000 sq. ft. or more in size), a community facility (e.g. senior center, 10,000 sq. ft. or more in size), pedestrian crossing safety improvements at adjacent intersections, and donation of funds for development of bike lanes. These public benefits would be consistent with other public benefit requirements for height bonuses for developments in the downtown area.
 - g. This Ordinance would not be growth inducing nor would it be precedent setting as the property and proposed square footage addition would be consistent with the development standards and land uses included in the existing San Rafael Corporate Center. The development of the proposed project at this location would be in the public interest in that it would further the policies of the General Plan by developing an infill property within the downtown area of San Rafael. In summary, as the proposed amendments would not result in similar development increases for other areas of San Rafael, the action would not be precedent setting or growth-inducing.
2. The public health, safety and general welfare are served by adoption of the proposed Zoning Ordinance amendments, in that: a) an Environmental Impact Report has been prepared and certified, consistent with the California Environmental Quality Act (CEQA) and considered the proposed height bonus allowance, b) City department and regulatory agencies have been provided copies of plans and asked to provide input on the proposed project, including the amendment to the height bonus table;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION 1. Findings

The City Council of the City of San Rafael hereby determines and finds that all of the facts and statements contained in the recitals herein and the findings of Planning Commission Resolution 20-05, adopted January 28, 2020, recommending to the City Council adoption of this Ordinance, are true and correct.

DIVISION 2. Amendment

The City Council of the City of San Rafael hereby approves and adopts the amendments to Section 14.16.190 of SRMC Title 14 (Zoning Ordinance), as presented in Exhibit A, attached hereto and incorporated herein by reference.

DIVISION 3. Publication; Effective Date

This Ordinance shall be published once, in full or in summary form, before its final passage, in a newspaper of general circulation, published, and circulated in the City of San Rafael, and shall be in full force and effect thirty (30) days after its final passage. If published in summary form, the summary shall also be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.



GARY O. PHILLIPS, Mayor

ATTEST:



LINDSAY LARA, City Clerk

The foregoing Ordinance No. 1980 was introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 23rd day of March 2020 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Bushey, Colin, Gamblin, McCullough and Mayor Phillips

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 6th day of April 2020.



LINDSAY LARA, City Clerk

Exhibit A
Amendment to San Rafael Municipal Code (SRMC) Title 14 – Zoning

The following section of the San Rafael Municipal Code (SRMC) Title 14 – Zoning is hereby amended to provide a new maximum height bonus of 20 feet for the 999 3rd Street property, including public amenities, as shown with the new (underlined) and modified (~~strike thru~~), as follows

Section 14.16.190.A – Height Bonus

- A. Downtown Height Bonuses. A height bonus may be granted by a use permit approved by the planning commission in the following downtown zoning districts. No more than one height bonus may be granted for a project.
1. In the Fourth Street retail core, a twelve-foot (12') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing);
 - b. Public courtyards, plazas and/or passageways, with the recommendation of the design review board that the public improvements are consistent with downtown design guidelines;
Public parking, providing it is not facing Fourth Street and it is consistent with the downtown design guidelines.
 2. In the Lindero district, on lots south of Second Street and fronting Lindero Street, a twenty-four-foot (24') height bonus for any of the following:
 - a. Park area adjacent to Mahon Creek, accessible to the public and maintained by the property owner;
 - b. Community facility, ten thousand (10,000) square feet or more in size. The facility must be available to the public for cultural and community events, and maintained and operated by the property owner.
 3. In the Second/Third mixed use east district, a twelve-foot (12') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing);
 - b. Public parking, providing it is consistent with the downtown design guidelines;
 - c. Skywalks over Second or Third Streets, with the approval of the traffic engineer, and the recommendation of the design review board;
 - d. Mid-block passageways between Fourth Street and parking lots on Third Street, with the recommendation of the design review board that the design is attractive and safe.
 4. On the 999 3rd Street Property, a twenty-foot (20') height bonus for any of the following:
 - a. Affordable housing (minimum 60 units)
 - b. Privately owned public plaza (5,000 sq. ft. or more in size)
 - c. Community facility (e.g. senior center, 10,000 sq. ft. or more in size)
 - d. Pedestrian crossing safety improvements at adjacent intersections
 - e. Donation of funds for development of bike lanes;
 - 4.5. In the West End Village, a six-foot (6') height bonus for any of the following:
 - a. Affordable housing, consistent with Section 14.16.030 (Affordable housing);
 - b. Public parking, providing it is consistent with the downtown design guidelines;

- c. Public passageways, with the recommendation of the design review board that the public passageway serves an important public purpose and is attractive and safe.

5.6. In the Second/Third mixed use west district, on lots located on the north side of Third Street

and east of C Street, an eighteen-foot (18') height bonus for the following:

- a. Public parking, providing it is consistent with the downtown design guidelines.

****No changes to Sections B OR C OF SRMC 14.16.190****