

ORDINANCE NO. 1982

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADOPTING A DEVELOPMENT AGREEMENT (DA19-001) FOR THE SAN RAFAEL CORPORATE CENTER (750-790 LINDARO STREET AND 781-791 LINCOLN AVENUE AND 999 3rd STREET) TO EXPAND THE ALLOWABLE DEVELOPMENT AND OVERALL LAND AREA TO INCLUDE TWO RESEARCH AND DEVELOPMENT BUILDINGS TOTALING 207,000 SQUARE FEET AND TO DEFINE THE AGREEMENT TERMS
(APN's: 011-265-01, 013-012-38 and -39 and 013-021-50, -51, -52 -53, -54, -55)**

WHEREAS, in February 1998, the San Rafael City Council adopted a Planned Development Zoning District (PD-1721) approving a Master Plan for the development of a 406,000 square foot office park on a 15.54-acre site located south of Second Street in Downtown San Rafael. Concurrent with this action, the City Council adopted Ordinance No. 1722 approving a Development Agreement with Fair, Isaac and Company, Inc., the initial project developer, who was planning to be the single tenant for the office park. The Development Agreement included specific terms, conditions and requirements agreed to by both the City and Fair, Isaac for a 10-year build-out of the "San Rafael Corporate Center" office park; and

WHEREAS, in August 2000, the City Council adopted Ordinance No. 1755, approving the first amendment to the Development Agreement to approve changes in the property ownership (Equity Office) and to the development standards in order to accommodate multi-tenant use of the San Rafael Corporate Center. Since 2000, the office park ownership has changed and subsequent amendments to the Development Agreement were adopted to reflect the ownership changes; and

WHEREAS, in December 2011, the City Council adopted Ordinance No. 1902, approving a second amendment to the Development Agreement for the San Rafael Corporate Center to expand the allowable land uses to include medical office and research and development; and

WHEREAS, since 2000, nearly all of the approved San Rafael Corporate Center office park campus has been developed and occupied by administrative and professional office and R& D businesses. To date, five of the six office approved office/R& D buildings and two parking structures have been built, along with surface parking, campus landscaping and the publicly accessible park area. and

WHEREAS, on October 10, 2018, BioMarin Pharmaceutical (BioMarin), in conjunction with Whistlestop/Eden Housing, submitted project applications to the City of San Rafael Community Development Department for a General Plan Amendment (GPA18-001), Zoning Text Amendment (ZO18-003), Planned Development (PD) Amendment (ZC18-002), Master Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Development Agreement (DA19-001), Small Subdivision (S18-001), and Sign Program Amendment (SP18-18-006) for the development of two 72-foot tall, four-story laboratory/research and development buildings, totaling 207,000 sq. ft., 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 (the "Project"); and

WHEREAS, the total development for BioMarin includes a request to include 118,099 square feet of the 999 3rd Street property to be incorporated into the existing San Rafael

Corporate Center (SRCC) PD District. The total site area of the amended SRCC campus would be 795,021 sq. ft.; and

WHEREAS, the project application for BioMarin includes a request to modify the existing Floor Area Ratio (FAR) for the 118,099 square feet of the 999 3rd Street property from 1.50 to 0.90 and a request to modify the existing FAR for the SRCC from 0.75 to 0.90. The total FAR of 0.90 for the newly amended SRCC would allow the two proposed buildings, totaling 207,000 sq. ft., of the BioMarin project to be included in the total allowed campus development of 715,519 sq. ft.; and

WHEREAS, a Development Agreement has been requested by BioMarin to establish a 10-year time frame for the approvals and to freeze the development application and impact fees for a period of 10 years for the BioMarin component of the Project; and BioMarin has offered the City a series of public benefits as consideration for the Development Agreement; and

WHEREAS, a Development Agreement has been drafted to incorporate the proposed terms and obligations for both parties; and

WHEREAS, the proposed Development Agreement has been processed in accordance with the requirements set forth in City Council Resolution No. 6089, which establishes the City's rules and regulations for the consideration of Development Agreements; and

WHEREAS, on January 28, 2020, the Planning Commission held a duly noticed public hearing on the environmental documents and applications and for the Project, including this Development Agreement, accepting all oral and written public testimony and the written report of the Community Development Department Planning staff. The Planning Commission considered the responses to comments contained in the FEIR and recommended to the City Council, by Resolution No. 20-01, certification of the Final EIR in that it complies with all requirements of CEQA. The Planning Commission also recommended to the City Council, by Resolution No. 20-02, adoption of Statement of Overriding Considerations and Approval of the Mitigation Monitoring and Reporting Plan (MMRP); and

WHEREAS, on January 28, 2020, the Planning Commission adopted Resolution No. 20-06, recommending to the City Council approval of the proposed Development Agreement, with one modification, to not eliminate a condition of approval, previously imposed on the 755 Lindaro/Lincoln Garage expansion, requiring the creation of a pedestrian connection to SMART on the backside of the Lincoln Avenue garage, along the west side of Mahon Creek; and

WHEREAS, on January 28, 2020, the Planning Commission also adopted the following Resolutions, recommending to the City Council:

- Approval of a General Plan amendment (GPA18-001) (Resolution No. 20-03)
- Adoption of a Zoning Ordinance text amendment (ZO18-003) (Resolution No. 20-04)
- Adoption of a Planned Development Rezoning (ZC18-002) (Resolution No. 20-05),
- Approval of a Use Permit (UP18-034), Environmental and Design Review Permit (ED18-087), Small Subdivision (S18-001), and Sign Program Amendment (SP18-006) (Resolution No 20-07); 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 Development Agreement 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, on March 23, 2020, the City Council, by adoption of separate Ordinances, approved a Zoning Ordinance Text Amendment (ZO18-003) and Planned Development Rezoning (ZC18-002); and

WHEREAS, the custodian of documents which constitute the record of proceedings upon which this decision is based, is the Community Development Department.

WHEREAS, the City Council makes the following findings, pursuant to City Council Resolution No. 6089, for approval of the Development Agreement and incorporated herein by reference:

Development Agreement Findings (DA19-001)

1. The proposed Development Agreement is consistent with the policies, general land uses and programs specified in the General Plan and other applicable specific plan given that the proposed office and research and development uses within the BioMarin campus would be consistent with the 2/3 MUE general plan land use designation, the proposed floor area ratio and height of the building are consistent with the FAR and height standards, with the inclusion of a General Plan amendment, which has been adopted by separate City Council resolution. The Development Agreement, and the approvals vested therein, would be consistent with:
 - a. Circulation Element Policy C-5D (*Evaluation of Project Merits*) and Program C-5c (*Exception Review*), which acknowledge that the City may approve an action that would exceed the LOS standards set by Policy C-5, if the City finds that the benefits of the project to the community outweigh the traffic impacts.
 - b. 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;
 - c. 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.

2. The Development Agreement, and the approvals vested therein, is compatible with the uses authorized in the regulations prescribed for the land use district in which the property is located, with an amendment to the PD zoning district which has been adopted by separate City Council resolution, in that:
 - a. This action 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;
 - b. The proposed blended 0.90 Floor Area Ratio will reduce the existing 999 3rd Street FAR but raise the existing SRCC FAR from 0.75 to 0.90. The net change will result in a total floor area that will be an increase in 30,678 sq. ft. for the newly modified total Project area.
 - c. This action 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, the Development Agreement would not result in similar development increases for other areas of San Rafael and would not be precedent setting or growth-inducing.
3. The Development Agreement, and the approvals vested therein, is in conformity with public convenience, general welfare and good land use practice in that the proposed Project would provide desired public benefits and amenities as described in the adopted modification of General Plan Exhibit 10, including: Affordable housing (67 senior affordable units), a privately-owned public plaza (approximately 6,000 sq. ft.), a community facility (18,000 sq. ft. senior center), 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.
4. The Development Agreement will not be detrimental to the health, safety and general welfare, given that the City Council has certified an EIR assessing potential environmental impacts and most potential impacts can be reduced to less than significant levels with mitigation measures, and, by separate resolution, has adopted a statement of overriding considerations to four potential significant unavoidable impacts to land use and transportation associated with the development of the Project.
 - a. The City Council has balanced the economic, legal, social, and technological benefits of the proposed project against its unavoidable environmental impacts when determining to approve the project. The project benefits outweigh the unavoidable adverse environmental effects and are considered “acceptable” and a statement of overriding considerations has been adopted and supported by substantial evidence in the record;

- b. In support of CEQA Guidelines Section 15063 the San Rafael General Plan 2020 includes Circulation Element Policy C-5D (Evaluation of Project Merits) and Program C-5c (Exception Review), which permits the City to authorize an exception to the City-adopted traffic standards by weighing the community benefits of a project against the potential for the project to deviate from the City-adopted level of service (LOS) traffic standards;

WHEREAS, the City Council has considered the Planning Commission's recommendation to retain the previously imposed requirement for a new path behind the Lincoln Avenue parking garage, but finds that the elimination of this requirement is appropriate and warranted based on: 1) the totality of the benefits offered by the Development Agreement, which capture increased funding for pedestrian and bicycle improvements in the area; and 2) the Council's finding that the proposed new path would be duplicative with two other existing pedestrian paths within two hundred feet (Mahon Creek path along the eastern bank of Mahon Creek and Lincoln Avenue sidewalk), which provide similar and equal public access from Lincoln Avenue to 2nd Street and the Bettini Transit Center.

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

DIVISION 1. Findings.

The City Council hereby determines and finds that all of the facts and statements contained in the recitals herein, and the findings of Planning Commission Resolution No. 20-06, adopted January 28, 2020, recommending to the City Council adoption of this Ordinance, are true and correct.

DIVISION 2. Approval of Development Agreement.

The City Council hereby approves the Development Agreement, between with BioMarin (California Corporate Center Acquisition, LLC, a Delaware limited liability company "CCCA") and the City of San Rafael concerning the San Rafael Corporate Center project planned for the subject property at 999 3rd Street and the existing San Rafael Corporate Center Campus, a copy of which is on file in the office of the City Clerk. and the Council authorizes the Mayor and the City Clerk to execute said Development Agreement on behalf of the City and to take any other actions necessary to complete this transaction.

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. 1982 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 was 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