

ORDINANCE NO. 2181, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT FOR THE DEL MONTE - GIOVANNI PROJECT LOCATED ON THE EAST SIDE OF DEL MONTE AVENUE, 600 FEET NORTH OF WRIGHT AVENUE. THE AMENDMENT EXTENDS THE OBTAIN BUILDING PERMIT DATE THREE MONTHS AND THE COMMENCEMENT OF CONSTRUCTION DATE SIX MONTHS FOR THE SIX FISCAL YEAR 2014-2015 BUILDING ALLOCATIONS

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. On April 16, 2014, the City Council adopted Ordinance No. 2105, N.S. which approved a development agreement establishing 'Commence Construction' dates for the 6-unit project which received allocations from MMC 12-03: Del Monte - Giovanni. The City Council adopted Ordinance No. 2146, N.S. on June 3, 2015, which approved a development agreement amendment to extend the Obtain Building Permits date from May 30, 2015 to November 30, 2015 and the Commence Construction dates from June 30, 2015 to December 31, 2015.

SECTION 4. On October 22, 2009, the City Council adopted Council Policy CP-09-02, establishing criteria by which to evaluate ELBA requests filed by developers.

SECTION 5. In accordance with Policy CP-09-02, the project has not completed steps one through six of the eight developer "actions" defined in Council Policy CP-09-02 to be considered more favorably for an extension; however, the project has completed steps one and two (Planning applications submitted and approved), steps three and four (Final map/Improvement plans submitted and approved) and is nearing completion of steps five through eight with Final map/Improvement plan recordation pending payment of fees and Building permit issuance pending Final map/Improvement plan recordation and the project has been found to be subject to unique circumstances and therefore an extension may be allowed under the same policy.

SECTION 6. A three month extension of the Obtain Building Permit and a six month extension of the Commence Construction date for the 6, FY 2014-15 allocations is hereby incorporated into the Development Agreement for MMC 12-03: Del Monte - Giovanni.

SECTION 7. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to

shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 8. The City Council of the City of Morgan Hill found that, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the City Council's independent judgment and analysis, and that the Mitigated Negative Declaration was adopted prior to action taken to adopt the original project proposal. The custodian of the documents or other material which constitute the record shall be the Community Development Department.

SECTION 9. ADOPTION OF AMENDED DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement Amendment for DAA13-11A: Del Monte-Giovanni as attached in Exhibit "A" of this ordinance.

SECTION 10. If the applicant fails to comply with the development schedule outlined in the attached Exhibit "A", the exception to loss of building allotment is subject to revocation per Section 18.78.150 of the Morgan Hill Municipal Code.

SECTION 11. The City Council hereby finds that the development proposal and agreement approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

SECTION 12. Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

SECTION 13. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 2ND DAY OF DECEMBER 2015 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 16TH DAY OF DECEMBER 2015 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

**AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:**

APPROVED:

STEVE TATE, MAYOR

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date: January 15, 2016

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2181, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 16th day of December 2015.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

EXHIBIT "A"

Exhibit C shall be amended as follows:

EXHIBIT C

DEVELOPMENT SCHEDULE

MMC-12-03: DEL MONTE - GIOVANNI – FY 2014-2015, 6 allocations

I. SITE REVIEW APPLICATION

Application Filed 03-31-14

II. FINAL MAP SUBMITTAL

Application Filed 04-07-15

III. BUILDING PERMIT SUBMITTAL

Submit plans to Building Division for plan check:
FY 2014-15 (6 units) 09-30-15

IV. BUILDING PERMITS

Obtain Building Permits:
FY 2014-15 (6 units) 02-29-16

V. COMMENCE CONSTRUCTION:

FY 2014-15 (6 units) 06-30-16

Failure to obtain building permits by the dates listed above shall result in the loss of building allocations. Submitting a Final Map Application or a Building Permit one (1) or more months beyond the filing dates listed above shall result in the applicant being charged a processing fee equal to double the building permit plan check fee and/or double the map checking fee to recoup the additional costs incurred in processing the applications within the required time limits. Additionally, failure to meet the Final Map Submittal and Building Permit Submittal deadlines listed above may result in loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 4 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.