

## ORDINANCE NO. 2200, NEW SERIES

### AN ORDINANCE OF THE CITY OF MORGAN HILL APPROVING AN AMENDED DEVELOPMENT AGREEMENT (DAA-06-04 G: DIANA-SHERIMAR), A 117-UNIT RESIDENTIAL PROJECT LOCATED ON THE SOUTH SIDE OF DIANA AVENUE AND WEST RINGEL DRIVE, EAST OF MURPHY (APNS 728-20-1, 2, 3, 12, 37& 38) EXTENDING THE COMMENCEMENT OF CONSTRUCTION DATE FOR 22, FISCAL YEAR 2014-2015 BUILDING ALLOTMENTS FOR TWELVE MONTHS

**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.** The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded application MC-04-04: Diana-Chan 114 building allotments collectively from FY 2007-08 , FY 2008-09, FY 2009-10, FY 2012-13, FY 2013-14 and FY 2014-15; and

**SECTION 4.** On February 4, 2009, the City Council adopted Ordinance No. 1914, N.S. which approved a Development Agreement which established 'commence construction' dates for the 117-unit project. Reference is hereby made to that certain Agreement on file in the office of the City Clerk of the City of Morgan Hill. The agreement 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 5.** 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 Agency.

**SECTION 6.** The City Council has since adopted Ordinance Nos. 1983, 2011, 2027 & 2072 N.S. each amending Ordinance No.1914; and

**SECTION 7.** On October 22, 2009, the City Council adopted Council Policy CP-09-02, establishing criteria by which to evaluate ELBA requests filed by developers; and in accordance with Policy CP-09-02, projects that have timely completed at least six of eight steps in the permitting process would be considered favorably for an extension because it demonstrates good faith effort by the developer in commencing and completing the project. The Council may also consider other circumstances unique to a

project to support an extension of the building allocation provided the applicant provides sufficient evidence of the extraordinary or unique circumstances; and

**SECTION 8.** A 12-month extension is currently requested for two of the 22 allocations awarded for FY 2014-15; and

**SECTION 9.** The Sherimar project has reached Step eight and the circumstance where two remaining lots have been retained by the original land owner is unique and creates a circumstance where the lots will be developed as custom lots which traditionally takes an additional 12 months to complete; and

**SECTION 10.** ADOPTION OF AMENDED DEVELOPMENT SCHEDULE, EXHIBIT B. The City Council hereby approves the Development Agreement Amendment attached to this Ordinance as Exhibit A.

**SECTION 11.** The amended development schedule attached to this Ordinance hereby supersedes and replaces the amended development schedule approved under Ordinance No. 2141.

**SECTION 12.** The City Council hereby finds that the development agreement amendment 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 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 18<sup>TH</sup> DAY OF MAY 2016 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 1<sup>ST</sup> DAY OF JUNE 2016 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**

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Effective Date: July 1, 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. 2200, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 1<sup>st</sup> day of June 2016.

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

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT A**  
**Exhibit B of the development agreement shall be amended as follows:**

**EXHIBIT "B"**

**DEVELOPMENT SCHEDULE MC 04-04, MC-10-03: Diana-Chan, MC 11-07 & MC 12-09 Diana-Sherimar, 5, FY 2007-08 allocations/13, FY 2008-09 allocations/14, FY 2009-10 allocations/31 FY2012-13/29 FY 2013-14/22 FY 2014-15**

**I. SUBDIVISION AND ZONING APPLICATIONS**

Applications Filed:	06-30-06
FY 2012-13 (31 units)	06-30-12
FY 2013-14 (29 units)	06-30-13
FY 2014-15 (22 units)	06-30-14

**II. SITE REVIEW APPLICATION**

Application Filed:	06-01-10
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**III. FINAL MAP Submittal of Map, and Improvements Agreement:**

FY 2007-08 ( 5 units)	10-31-10
FY 2008-09 (13 units)	10-31-10
FY 2009-10 (14 units)	10-31-11
FY 2012-13 (31 units)	10-31-12
FY 2013-14 (29 units)	10-31-13
FY 2014-15 (22 units)	10-31-14

Map, Improvements Agreement and Bonds approved by Council

FY 2007-08 ( 5 units)	03-30-11
FY 2008-09 (13 units)	03-30-11
FY 2009-10 (14 units)	03-30-12
FY 2012-13 (31 units)	03-30-13
FY 2013-14 (29 units)	03-30-14
FY 2014-15 (22 units)	03-30-15

**IV. BUILDING PERMIT SUBMITTAL**

Submit plans to Building Division for plan check:

FY 2007-08 ( 5 units)	01-30-11
FY 2008-09 (13 units)	01-30-11
FY 2009-10 (14 units)	01-30-12
FY 2012-13 (31 units)	03-30-13
FY 2013-14 (29 units)	03-30-14
FY 2014-15 (22 units)	03-15-17

**V. BUILDING PERMITS**

Obtain Building Permits:

FY 2007-08 ( 5 units)	10-30-11
FY 2008-09 (13 units)	10-30-11
FY 2009-10 (14 units)	05-30-12
FY 2012-13 (31 units)	05-30-13
FY 2013-14 (29 units)	05-30-14
FY 2014-15 (22 units)	05-30-17

**VI. Commence Construction:**

FY 2007-08 ( 5 units)	12-30-11
FY 2008-09 (13 units)	12-30-11

FY 2009-10 (14 units)	06-30-12
FY 2012-13 (31 units)	06-30-13
FY 2013-14 (29 units)	06-30-14
FY 2014-15 (22 units)	06-30-17

Submitting a Final Map Application or a Building Permit one 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.

Failure commence construction by the date listed above shall result in the 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 58 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.