

2006 JUN -8 PM 10:15

OAKLAND CITY COUNCIL
ORDINANCE NO. 12760 C.M.S.

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND, THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, AND OAKLAND HARBOR PARTNERS, LLC, AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY

WHEREAS, on May 28, 2004 in accordance with the California Environmental Quality Act ("CEQA"), City staff issued a Notice of Preparation to prepare an Environmental Impact Report ("EIR") for the Oak to Ninth Avenue Mixed Use Development Project ("Project"); and

WHEREAS, as a part of the proposed Project, the project applicant requested that the City of Oakland enter into a development agreement with the applicant in order to regulate the large-scale development Project and to provide both the City and the project applicant with assurances that the Project could be successfully and completely built out over time; and

WHEREAS, on September 1, 2005, a Draft EIR ("DEIR"), State Clearinghouse No. 2004062013, was released by the City for a 54-day public review and comment period and on September 28, 2005, October 12, 2005, and October 17, 2005, respectively, the Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board conducted public hearings to provide the public with an additional opportunity to comment on the DEIR; and

WHEREAS, on December 3, 2005, the Planning Commission conducted a site visit to the Project site; and

WHEREAS, on February 1, 2006, the City released a Final EIR for the Project and on June 9, 2006 the City published an addendum to the Final EIR; and

WHEREAS, on February 8, 2006, the Parks and Recreation Advisory Commission, and, on January 9, 2006 and February 27, 2006, the Landmarks Preservation Advisory Board held public hearings on the Project; and

WHEREAS, on December 14, 2005 and January 25, 2006, the Design Review Committee of the Planning Commission held public hearings on the Project; and

WHEREAS, on January 25, 2006, the Planning Commission held a public hearing to discuss the major environmental and policy issues pertaining to the Project; and

WHEREAS, on March 15, 2006, the Planning Commission held a public hearing on the Project and City certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings, recommended adoption of General Plan Amendments, recommended adoption of amendments to the Central City East Redevelopment Project Area Plan and the Central District Redevelopment Project Area Plan, recommended adoption of an ordinance rezoning the Project site, recommended adoption of an ordinance adopting the Planned Waterfront District-4 zoning district, approved a Preliminary Development Plan, approved Design Guidelines, approved a Vesting Tentative Subdivision Map, recommended that the City Council approve the proposed Development Agreement, and adopted accompanying Conditions of Approval; and

WHEREAS, an appeal of the Planning Commission actions was filed on March 24, 2006 by Arthur D. Levy on behalf of Oakland Heritage Alliance, Rajiv Bhatia, John Sutter, East Bay Bicycle Coalition, League of Women Voters of Oakland, Waterfront Action, Coalition of Advocates for Lake Merritt, and Sierra Club Northern Alameda County Regional Group; and

WHEREAS, on March 28, 2006 the City Council and the Oakland Redevelopment Agency held a public Informational Workshop on the Project and the Project approvals; and

WHEREAS, the City Council and Oakland Redevelopment Agency held a public hearing on June 20, 2006, which was noticed in accordance with legal requirements; and

WHEREAS, the appellants and all other interested parties were given the opportunity to participate in the public hearing through oral testimony and the submittal of written comments; and

WHEREAS, on June 20, 2006, the City Council fully reviewed, considered, and evaluated the Project EIR, all of the staff reports prepared for the Project including the attachments to the staff reports, public testimony, and all other documents and evidence in the public record on the Project and the appeal; and

WHEREAS, the City found that the Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138; and

WHEREAS, the City further found that the Project is consistent with the General Plan (including the Estuary Policy Plan) and all applicable planning and zoning enactments as set forth specifically in Exhibit D entitled "General Findings" and incorporated by this reference; and

WHEREAS, the City further found that the Project is extensive in scope and, therefore, is likely to be constructed over a significant period of time, with several different development phases proposed, and thus the Development Agreement is desirable in order to facilitate the successful Project implementation and provide assurances to both the City and the project applicant concerning a unified set of development standards, requirements and expectations; and

WHEREAS, the City further found that the Project will provide significant new open space and improve existing open space areas within the Project boundaries, as shown in the Preliminary Development Plan for the Project; and

WHEREAS, the City further found that the Project will have substantial economic benefits to the City; and

WHEREAS, the City further found that the Project will generate permanent and construction jobs; and

WHEREAS, the City further found the Project is located within the Central District Urban Renewal Plan area and the Central City East Redevelopment Plan area and therefore will generate substantial tax increment revenue to assist with redevelopment projects in these areas; and

WHEREAS, the City further found that construction of the Project will redevelop the Oak to Ninth Avenue Project site into a well-planned, mixed use neighborhood with significant new open space that will serve the citizens of Oakland and will enhance the City's image; and

WHEREAS, the City further found that the Project, as an urban infill mixed-use project, will encourage the use of public/alternative transportation and will not contribute to the negative impact of urban sprawl; and

WHEREAS, the City Council affirms and adopts the City findings cited above, and additionally finds that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the Development Agreement; and

WHEREAS, the notice required by Oakland Municipal Code section 17.138.030 has been given.

THE CITY COUNCIL OF THE CITY OF OAKLAND ORDAINS AS FOLLOWS:

Section I: The City Council hereby approves the Development Agreement substantially in the form attached hereto as Attachment A, subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.

Section II: This ordinance, including the Development Agreement approval described in Section I above, is based in part on the findings set forth above, and the CEQA Findings and Statement of Overriding Considerations Related to Approval of the Oak to Ninth Avenue Mixed Use Development Project, Mitigation Monitoring and Reporting Program, Conditions of Approval and the General Findings Related to Approval of the Oak to Ninth Avenue Mixed Use Development Project attached as Exhibits A-D and incorporated by this reference.

Section III: The City Administrator is hereby authorized and directed to perform all acts to be performed by the City in the administration of the Development Agreement pursuant to the terms of the Development Agreement, including but not limited to conducting annual review of compliance as specified in Article VI thereof. The City Administrator is further authorized and directed to perform all other acts, enter into all other agreements and execute all other documents necessary or convenient to carry out the purposes of this Ordinance and the Development Agreement.

Section IV: Except as specifically set forth herein, this ordinance suspends and supercedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

Section V: If any provisions of this ordinance or application thereof to any person or circumstances are held invalid, the remainder of this ordinance and the application of provisions to the other persons or circumstances shall not be affected thereby.

Section VI: If any provision of this Ordinance or application thereof to any person or circumstances is held invalid, the remainder of this Ordinance and the application of provisions to other persons or circumstances shall not be affected thereby.

Section VII: If any provision of the Development Agreement that this Ordinance approves or application of the Development Agreement to any person or circumstances is held invalid, the remainder of the Development Agreement and the application of provisions to other persons or circumstances shall not be affected thereby.

Section VIII: This Ordinance shall not be codified in the Oakland Municipal Code.

N COUNCIL, OAKLAND, CALIFORNIA, JUL 18 2006

PASSED BY THE FOLLOWING VOTE:

AYES — BRUNNER, CHANG, KERNIGHAN, NADEL, REID AND PRESIDENT DE LA FUENTE — 6

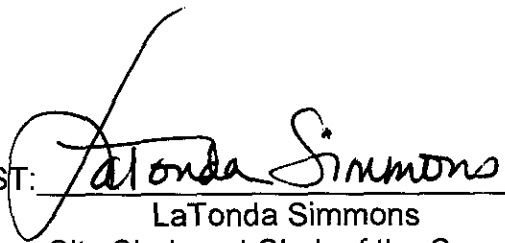
NOES — 0

ABSENT — 0

ABSTENTION — 2 Brooks and Quan

Introduction Date: JUN 20 2006

ATTEST:


LaTonda Simmons

City Clerk and Clerk of the Council
Of the City of Oakland, California

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF OAKLAND AND OAKLAND HARBOR PARTNERS, LLC, AND
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE THE DEVELOPMENT
AGREEMENT ON BEHALF OF THE CITY**

Attachment A

DEVELOPMENT AGREEMENT BETWEEN CITY OF OAKLAND, REDEVELOPMENT
AGENCY OF THE CITY OF OAKLAND, AND OAKLAND HARBOR PARTNERS, LLC

Dated: _____, 2006

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BETWEEN THE CITY OF OAKLAND, REDEVELOPMENT AGENCY OF THE CITY
OF OAKLAND, AND OAKLAND HARBOR PARTNERS, LLC, AND AUTHORIZING
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NOTICE AND DIGEST

By this ordinance, the Oakland City Council authorizes the execution of a 20 year Development Agreement between the City of Oakland, the Redevelopment Agency of the City of Oakland and Oakland Harbor Partners, LLC, the project sponsors of the Oak to Ninth Development Project, setting forth obligations and responsibilities of the City, the Redevelopment Agency and the project sponsor. Provisions of the agreement include requirements for developer's site remediation and construction of public improvements within specific time periods, establishment of a phasing schedule and plan for the project, provisions for the establishment of a community facilities district and community services district for operation and maintenance of City-owned open space.