



REPORT TO THE PLANNING COMMISSION

AGENDA ITEM NO. **VIII-A**
COMMISSION MEETING 12-8-14

APPROVED BY



DEPARTMENT DIRECTOR

March 18, 2015

FROM: MIKE SANCHEZ, Assistant Director
Development and Resource Management Department

SUBJECT: CONSIDERATION OF REPEAL OF DEVELOPMENT AGREEMENT BY
AND BETWEEN THE CITY OF FRESNO AND ASHLAN/HAYES NO. 1 LP
(MCCAFFREY GROUP)

RECOMMENDATION

Staff recommends the Fresno City Planning Commission take the following action:

Recommend to the City Council repeal of the Development Agreement by and between the City of Fresno and Ashlan/Hayes No. 1 LP (McCaffrey Group).

EXECUTIVE SUMMARY

On December 16, 2008, the City Council, through Ordinance Bill 2008-78, adopted a Development Agreement between the City of Fresno and Ashlan/Hayes No. 1 LP (McCaffrey Group). The proposed project involved authorizing the subdivision and planned development of approximately 122.93 net acres (126.89 gross acres) of property located between West Ashlan Avenue and the West Gettysburg Avenue Alignment; and, between North Bryan and North Hayes Avenues.

Vesting Tentative Tract Map No. 5891/UGM and Conditional Use Permit Application No. C-07-308 were approved by the City Council on December 16, 2008.

A recent change in ownership have prompted the new owners (Granville Homes) to terminate the recorded Development Agreement and pursue other development options pursuant to the City's recently updated General Plan. Termination of the Development Agreement will provide a clean slate for a new development plan.

Staff is supportive of this termination request.

ENVIRONMENTAL FINDINGS

The proposed action is not considered a project under CEQA. Subsequent entitlements will undergo environmental review at the time of submittal.

Attachments:

- Vicinity Map
- Letter dated January 14, 2015
- Ordinance Bill No. 2008-78
- Draft Ordinance Bill

Recording Requested by:
City Clerk, Fresno, California
No Fee-Govt. Code 6103

Return to City Clerk, Fresno

Space above this line reserved for Fresno County Recorder's Office



ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO
PROPOSED AND INITIATED BY _____
MOVED BY xiong SECONDED BY Sterling

BILL NO. B-80

ORDINANCE NO. 2008-78

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADOPTING A DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF FRESNO AND ASHLAN/HAYES NO. 1 L.P. PURSUANT
TO THE PROVISIONS OF SECTION 65864 ET SEQ. OF THE
GOVERNMENT CODE.

WHEREAS, Conditional Use Permit Application No. C-07-308 and Vesting Tentative Tract Map No. 5891/UGM have been filed for all that certain real property in the City of Fresno, County of Fresno, State of California, hereinafter referred to as the Subject Property and described as follows:

Parcel 1:

The North half of the Northwest quarter of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof.

Except the North 30 feet thereof heretofore conveyed to Fresno Traction Company.

Parcel 2:

The North one-half of the South one-half of the Northwest quarter of the Southeast quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof.

Parcel 3:

The South one-half of the South one-half of the Northwest quarter of the Southeast quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom the South 165.00 feet of the West 548.00 feet, as conveyed to David Scarabello,

Adopted 12/16/08
Approved 12/16/08
Effective 1/16/09

2008-78



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By and Between the City of Fresno and Ashlan Hayes No. 1 L.P.
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by Gift Deed dated may 21, 1985 as Document No. 85067612, of Official Records.

Parcel 4:

The North one-half of the North one-half of the Southwest quarter of the Southeast quarter quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom all oil, gas and minerals previously reserved of record.

Parcel 5:

The North half of the North half of the Southeast quarter of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian,

Excepting therefrom the South 150 feet of the East 215 feet of the North half of the North half of the Southeast quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the most Westerly 660 feet of Parcel 2 of Parcel Map No. 4474, recorded in Book 31, Page 26 of Parcel Maps, Fresno County Records.

Parcel 6:

The South three-fourths of the Southwest quarter of the Southeast quarter and the West half of the South three-fourths of the Southeast quarter of the Southeast quarter all quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the Official Plat thereof, Fresno County Records.

Excepting therefrom the South 287 feet of the North 474 feet of the West 440 feet of the South three-fourths of the Southwest quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the South 208 feet of the North 682 feet of the West 228 feet of the South three-fourths of the Southwest quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the South 326.00 feet of the East 295.00 feet of the West half of the South three-fourths of the Southeast quarter of the Southeast quarter of said Section 16.

Parcel 7:

The South half of the North half of the South half of the East half of the East half of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the United States Government Township Plat; and,

WHEREAS, The Fresno City Council at its meeting on May 20, 2008 adopted the Mitigated Negative Declaration finding for Environmental Assessment No. A-07-08/R-07-29/C-07-308/T-5891 dated March 13, 2008 (Ordinance No. 2008-32/Bill No. B-34); and,

WHEREAS, The Fresno City Planning Commission at its meeting on November 05, 2008, adopted Resolution Nos. 12894 and 12895, thereby authorizing the development and subdivision of



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the Subject Property for the purposes of a 738-lot, single family residential (648 lots) and neighborhood commercial shopping center (4 lots) private street planned development subdivision with 86 Outlots proposed to be dedicated for various open space, private street, and parking purposes on approximately 122.93 net acres; and

WHEREAS, Pursuant to the provisions of Section 65864 et seq., of the Government Code, the City of Fresno is authorized to enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of the property; and,

WHEREAS, Ashlan/Hayes No. 1 L.P., a Limited Partnership, has such interest in the Subject Property and desires a Development Agreement by and between the City of Fresno and Ashlan/Hayes No. 1 L.P.; and,

WHEREAS, pursuant to the provisions of Section 65867 of the Government Code, the Planning Commission of the City of Fresno held a public hearing on the 10th day of December, 2008, to consider the proposed Development Agreement by and between the City of Fresno and Ashlan Hayes No. 1 L.P., during which the Commission considered, and recommended to the Council of the City of Fresno through Resolution No. 12912 approval of, the Development Agreement; and,

WHEREAS, The Council of the City of Fresno, on the 16th day of December, 2008, received the recommendations of the Planning Commission and City staff as specifically detailed in the Planning and Development Department Report to the City Council for the introduction and adoption of this Ordinance approving the Development Agreement by and between the City of Fresno and Ashlan/Hayes No. 1 L.P., dated December 16, 2008.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Based upon the testimony and information presented at the hearing and upon review and consideration of the environmental documentation provided, the adoption of the proposed Development Agreement is in the best interest of the City of Fresno. The Council finds in



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accordance with its own independent judgment that there is no substantial evidence in the record that the addition of the Development Agreement to the project description contained in the initial study and Mitigated Negative Declaration prepared for Environmental Assessment No. A-07-08/R-07-29/C-07-308/T-5891 dated March 13, 2008 ("MND"), through the Addendum dated December 16, 2008 results in a substantial change in the project through the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Accordingly, pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008 in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, the Addendum to the Mitigated Negative Declaration prepared for Environmental Assessment No. A-07-08/R-07-29/C-07-308/T-5891 is hereby approved.

SECTION 2. The Council finds that the proposed project is a development for which the Development Agreement is appropriate pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 3. The Council finds, in accordance with Section 65867.5 of the Subdivision Map Act, and pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008, that the proposed Development Agreement is consistent with the 2025 Fresno General Plan and West Area Community Plan; and,

SECTION 4. The Council finds that the proposed Development Agreement complies with the Fresno Municipal Code and other applicable ordinances, standards, policies, and regulations of the City of Fresno pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 5. The Council finds that the proposed Development Agreement furthers the public health, safety, and general welfare; and, will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the Subject Property, pursuant to the



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findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 6. The Council finds that the proposed Development Agreement provides for clear and substantial public benefit to the City of Fresno and residents along with a schedule for delivery of the benefit pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 7. The Council finds that the construction of public facilities required in conjunction with the development is adequate to serve the development pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 8. The Council finds that the proposed Development Agreement provides specified conditions under which further development not included in the agreement may occur pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 9. The Council finds that the proposed Development Agreement requires a faithful performance bond or other appropriate security in an amount deemed sufficient to guarantee the faithful performance of specified terms, conditions, restrictions, and/or requirements of the Agreement pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008.

SECTION 10. The Council finds, in accordance with Section 65867.5 of the Subdivision Map Act, and pursuant to the findings provided in the Planning and Development Department Report to the City Council dated December 16, 2008, that the proposed Development Agreement provides that Vesting Tentative Tract Map No. 5891/UGM has complied with the provisions of Section 66473.7 relative to the determination of a "sufficient water supply" as defined therein.

SECTION 11. The Council hereby adopts and approves the Development Agreement by and between the City of Fresno and Ashlan/Hayes No. 1 L.P. dated December 16, 2008, and



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By and Between the City of Fresno and Ashlan Hayes No. 1 L.P.
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authorizes the City Manager and/or his designee to execute the Development Agreement on behalf of the City of Fresno.

SECTION 12. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 16th day of December, 2008, by the following vote:

Ayes: Calhoun, Caprioglio, Dages, Duncan, Sterling, Xiong
Noes: None
Absent: Perea
Abstain: None

REBECCA E. KLISCH
City Clerk

By *Rebecca Klisch*

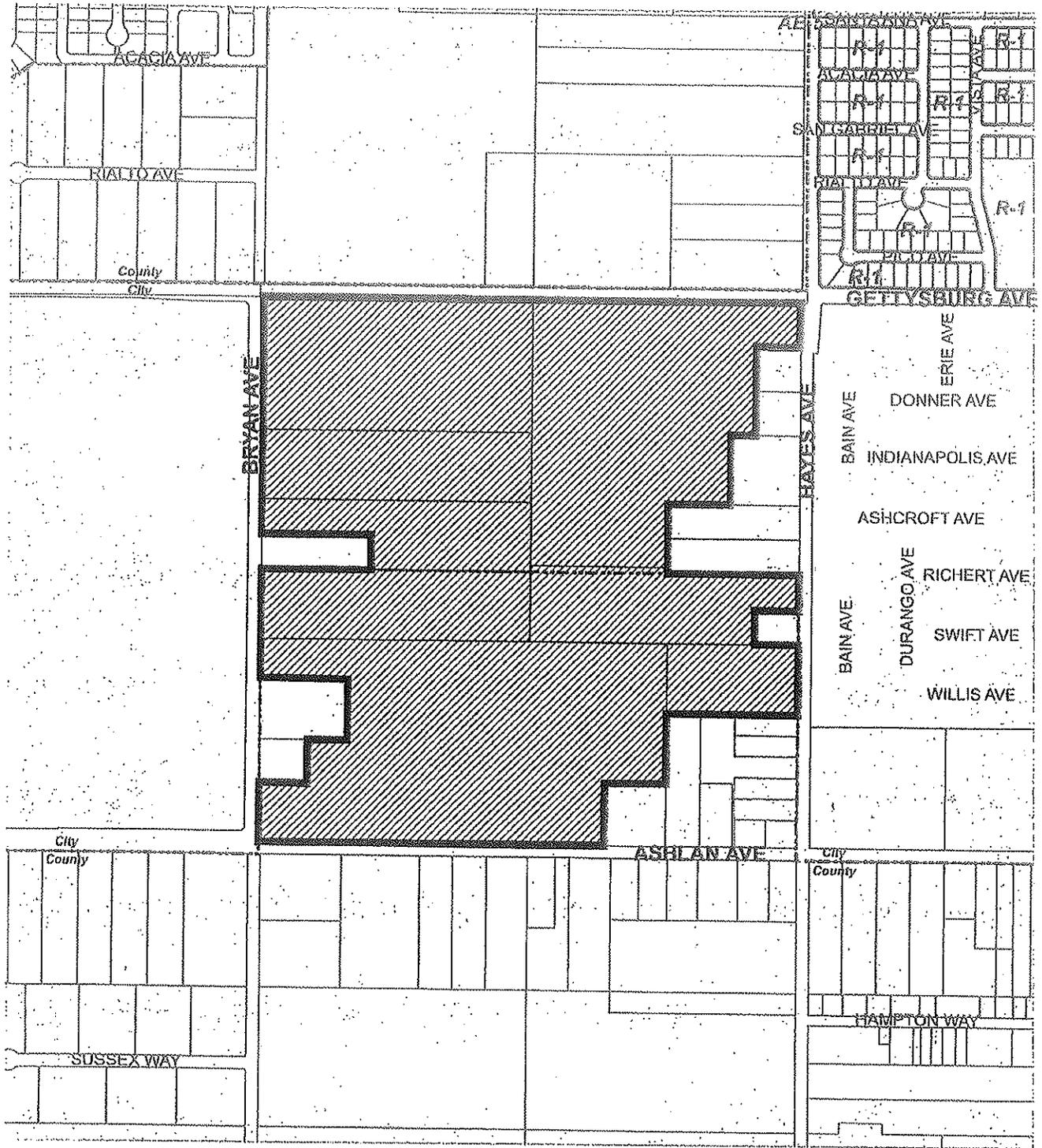
APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By *James C. Sanchez* 12/2/2008
Deputy

Development Agreement by and between the City of Fresno and Ashlan/Hayes No. 1 L.P.

APN No(s): 512-070-01, 07, 17, 19, 29, 32, 39, 48, 50 & 54



LEGEND



Subject Property



U.G.M. Area

VICINITY MAP

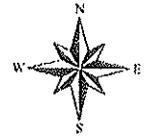
VESTING TENTATIVE MAP OF TRACT NO. 5891/UGM
 REZONE APPLICATION NO. R-07-029
 From AE-20 and R-A (county) to R-1/UGM, R-2/UGM, and C-1/UGM
 CONDITIONAL USE PERMIT NO. C-07-308

PLANNING & DEVELOPMENT DEPARTMENT

311-070-01,07,17,
 A.P.N.: 19,39,48,50,54

ZONE MAP: 2044

BY/DATE: D.N. / 12-11-07



NOT TO SCALE

GRAVILLE

Built with Love and Passion

Jennifer Clark, Director
Development and Resource Management Department
City of Fresno
2600 Fresno ST.
Fresno, CA 93721

Subject: Development Agreement: Ordinance No. 2008-78
(Adapted December 16, 2008)

Dear Mrs. Clark,

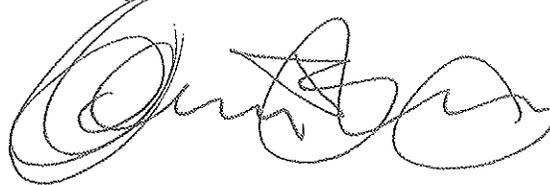
As per our discussion with the City manager on Wednesday, January 14, 2015, I am hereby requesting that the City Council repeal existing Development reference above.

As you are aware, we have recently purchased property from another local developer. The plans that they had for the site are completely different than what we propose and this means that we will have to process "new" entitlement applications for the property. The existing Development Agreement will be inconsistent with those plans and , therefore it is not needed anymore.

I have attached a copy of the Development Agreement for your reference. We would appreciate being scheduled for the City Council as soon as possible. This will allow us to move forward with our plans for the property.

Thank you.

Sincerely,



Jeffrey T. Roberts

Home Building • Land Development & Urban Infill • Farming

Address: 1396 West Herndon Avenue, Suite 101 Fresno, CA 93711

Corporate: 559.436.0900 Established: 1977 Websites: gvhomes.com • gvurban.com

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, CANCELLING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FRESNO AND ASHLAN/HAYES NO. 1 L.P. AND ITS SUCESSOR'S IN INTEREST PURUSANT TO THE PROVISIONS OF SECTION 65864 ET SEQ. OF THE GOVERNMENT CODE

WHEREAS, on May 20, 2008, the Council of the City of Fresno adopted Mitigated Negative Declaration finding for Environmental Assessment No. A-07-08/R-07-29/C-07-308/T-5891 dated March 13, 2008 (Ordinance No. 2008-32/Bill No. B-34); and

WHEREAS, on December 16, 2008, the Council of the City of Fresno adopted Ordinance No. 2008-78/Bill No. B-80 approving a Development Agreement with Ashlan/Hayes No. 1 L.P., a limited partnership, pursuant to the provisions of Section 65864 et seq., of the California Government Code; and

WHEREAS, the Development agreement applies to certain real property in the City of Fresno, County of Fresno, State of California, hereinafter referred to as the Subject Property and described as follows:

Parcel 1:

The North half of the Northwest quarter of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian in the City of Fresno, County of Fresno State of California, according to the Official Plat thereof.

Except the North 30 feet thereof heretofore conveyed to Fresno Traction Company.

Parcel 2:

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Excepting therefrom the South 165.00 feet of the West 548.00 feet, as conveyed to David Scarabello, by Gift Deed dated May 21, 1985 as Document No. 85067612, of Official Records.

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Also excepting therefrom the South 326.00 feet of the East 295.00 feet of the West half of the South three-fourths of the Southeast quarter of the Southeast quarter of said Section 16.

Parcel 7:

The South half of the North half of the East half of the East half of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the United States Government Township Plat; and

WHEREAS, Ashlan & Hayes Investment, LLC has purchased the Subject Property and is the successor in interest to Ashlan/Hayes No. 1 L.P pursuant to Section 100 of the Development agreement and is therefore bound by the Development Agreement; and

WHEREAS, Ashlan & Hayes Investment, LLC has requested cancellation of the Development Agreement and does not intend to enter in to an Assumption Agreement pursuant to Section 105.1 of the Development Agreement; and

WHEREAS, pursuant to Section 65868 of the California Government Code, a development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest; and

WHEREAS, pursuant to Section 65867, the Planning Commission of the City of Fresno conducted a duly noticed public hearing on March 18, 2015 on the proposed cancellation of the Development Agreement, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission adopted Resolution No. XXXXX, recommending cancellation of the Development Agreement in its entirety, to the Council of the City of Fresno; and

WHEREAS, on [date] the Council of the City of Fresno conducted a duly noticed public hearing on the proposed cancellation of the Development Agreement in its entirety, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council has considered all written and oral testimony on this matter.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and adopted as findings.

SECTION 2. Findings. The Council of the City of Fresno finds in its own independent judgment that:

- a. Ashlan & Hayes Investment, LLC has requested cancellation of the Development Agreement in its entirety.
- b. Cancellation of the Development Agreement in its entirety is in the best interests of the City of Fresno
- c. All noticing and public hearing requirements have been completed in compliance with the California Government Code.

d. The Development Agreement is hereby cancelled in its entirety, and all rights of Ashlan & Hayes Investment, LLC under the Development Agreement are hereby terminated.

e. Termination of the Development Agreement shall not prevent Ashlan & Hayes Investment, LLC from constructing or completing improvements authorized pursuant to other validly issued permits, approval or entitlements, provided the City of Fresno may take any action permitted by law to prevent, stop, or correct any violation of law occurring after cancellation of the Development Agreement

f. Any future development on the Subject Property will require compliance with the development standards and process requirements in place at the time of submittal.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase, or word in this Ordinance is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Fresno hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful, or otherwise invalid.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2015.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2015
Mayor Approval/No Return: _____, 2015
Mayor Veto: _____, 2015
Council Override Vote: _____, 2015

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Talia Kolluri-Barbick [Date]
Senior Deputy City Attorney

TKB:elb [67337elb/tkb] 3/13/15 Ordinance