

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING A PLANNED DEVELOPMENT PERMIT, SUBJECT TO CONDITIONS, TO EFFECTUATE THE PLANNED DEVELOPMENT ZONING DISTRICT (FILE NO. PDC17-054) AND TO ALLOW THE PARKING REQUIREMENTS TO CONFORM TO THE CURRENT PARKING REQUIREMENTS PER CHAPTER 20.90 OF THE MUNICIPAL CODE FOR MULTI-FAMILY DEVELOPMENTS ON AN APPROXIMATELY 9.3-GROSS ACRE SITE LOCATED ON THE NORTHWEST CORNER OF NUESTRA CASTILLO COURT AND SOUTH CAPITOL AVENUE (333 SOUTH CAPITOL AVENUE, 2601 NUESTRA CASTILLO CT AND 2605 LA HACIENDA CT)

FILE NO. PD17-026

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on December 6, 2017 an application (File No. PD17-026) was filed by the applicant, Monte Vista Community Partners, LP, for a Planned Development Permit to effectuate the Planned Development Zoning District (File No. PDC17-054) and to allow the parking requirements to conform to the current parking requirements per Chapter 20.90, on an approximately 9.3-gross acre site, on that certain real property situated in the A (PD) Planned Development Zoning District and located on the west side of south Capitol Avenue approximately 500 feet southerly of Sierra Grande Way (333 Capitol Avenue, 2601 Nuestra Castillo Court, and 2605 La Hacienda Court, San José, which real property is sometimes referred to herein as the “subject property”); and

WHEREAS, the subject properties are all those real properties more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

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WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on May 1, 2019, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing, the Planning Commission made a recommendation to the City Council respecting said matter based on the evidence and testimony; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendations of the City's Planning Commission and City's Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this City Council received in evidence a development plan for the subject property entitled, "Monte Vista Gardens," dated received on March 7, 2019, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing before the City Council was conducted in all respects as required by the San José Municipal Code and the rules of this City Council; and

WHEREAS, this City Council has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

After considering all of the evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located on the west side of South Capitol Avenue approximately 500 feet southerly of Sierra Grande Way (2601 Nuestra Castillo Court, 2605 La Hacienda Ct., and Alum Rock Transit Center at 333 South Capitol Avenue). Three different entities own the 9.3-gross acre site: Parcel 484-44-061, the Alum Rock Transit Center, is owned by the Santa Clara Valley Transportation Authority (VTA); Parcel 484-44-058, Monte Vista Senior Homes, is owned by ROEM corporation; and Parcel 484-44-059, Monte Vista Family Gardens, is owned by Monte Vista Community Partners, LP. The site is currently developed with a transit center, senior housing, and multi-family development. To the north of the site is an existing multi-family development and to the west and south are single-family homes. Across Capitol Avenue, to the east, are single family homes. The project area fronts the Alum Rock Light Rail Station.
2. **Project Description.** The project consists of bringing the existing multi-family development into conformance with current parking standards. During a review by the property owner of the project's conformance to the adopted zoning standards, the owner found that it did not meet the parking required in the current A(PD) zoning. The unit type mix was modified at the building permit stage in 2001 to increase the number of three-bedroom units and reduce the number of one-bedroom units, resulting in 8 fewer spaces provided than what should have been required based on the updated unit mix. (The total number of units did not change). The project provides 254 off-street parking spaces. Under current standards it would be required to provide 249 spaces, therefore it would meet the required parking amount. There is no construction or change of use associated with the project.
3. **Conformance to Planned Development Permit PD99-039.** The Planned Development Permit allows the construction of 144 multiple family attached residential

units, 69 senior apartment units and a park and ride lot. The project conforms to all the requirements of the Planned Development Permit except for the required number of parking space. The PD permit requires a total of 262 spaces for the unit mix, whereas only 254 parking spaces are provided.

- 4. General Plan Conformance.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram land use designation of Transit Residential (multi-family development) and Neighborhood/Community Commercial (senior housing and Alum Rock Transit Center). The Transit Residential land use designation supports high density, mixed-use residential development and is applied to areas near transit, jobs, amenities, and services. The allowable density for this designation is further defined within the applicable Zoning Ordinance designation. This portion of the site is developed with a multi-family residential development with a density of 28 DU/AC. The Neighborhood/Community Commercial (NCC) designation supports a broad range of commercial activity. These uses typically have a strong connection to and provide services and amenities for the nearby community and should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. The Transit Center use is consistent with this designation as it promotes transit use. The senior apartment development has a density of 52.3 DU/AC. While the senior housing use is not consistent with the NCC designation, General Plan Policy IP-1.4 considers effective Planned Development land use entitlements that were previously found to be in conformance with the General Plan (such as the senior housing) to be in conformance with the Envision General Plan. The Planned Development Permit (PD99-039) for the project was approved in 1999. There is no construction proposed with this rezoning and planned development permit.

The project conforms to the following key General Plan policies:

Goal H-2 Affordable Housing: Preserve and improve San José's existing affordable housing stock and increase its supply such that 15% or more of the new housing stock developed is affordable to low, very low and extremely low income households.

Land Use / Transportation Diagram Policy, IP-1.7 Use standard Zoning Districts to promote consistent development patterns when implementing new land use entitlements. Limit use of the Planned Development Zoning process to unique types of development or land uses which cannot be implemented through standard Zoning Districts, or to sites with unusual physical characteristics that require special consideration due to those constraints.

Analysis: The project would allow for the continued use of the site as multi-family residential adjacent to a transit center, furthering the General Plan goals to reduce auto dependency. In addition, the continued use of the project as a multi-family and affordable housing project supports the General Plan's goals for affordable housing. Since the project is not proposing any new construction and the original entitlement for the 9.3-acre site was processed through a planned development zoning, proceeding with a Planned Development Zoning process was deemed appropriate in this case.

5. **Zoning and Planned Development Zoning Conformance.** The site is zoned A(PD) Planned Development Zoning. The site is surrounded by other Planned Development Zoning Districts and Residential Zoning Districts. The A(PD) Planned Development Zoning District would rezone the property to conform to current parking standards and ensure the parking requirement is met. The rezoning would bring the project into conformance with the parking requirements as the site will provide 254 spaces, 5 more than the required amount.

Pursuant to Chapter 20.90 of Title 20 in the San José Municipal Code, the minimum required number of parking spaces is as follows:

Unit Type	Unit Mix	Chapter 20.90 (all open vehicle parking)	Number of Spaces Required
1 bedroom	24	1.25 spaces per unit	30
2 bedroom	72	1.7 spaces per unit	123
3 bedroom	48	2.0 spaces per unit	96
TOTAL	144		249

The zoning requires a minimum of 249 vehicle parking spaces and the project would provide 254 spaces, 5 more than the required amount.

6. **Environmental Review.** Under the provisions of Section 15305 Minor Alterations in Land Use Limitations of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The project seeks to change the parking requirements to conform to the City's existing requirements as codified in the Municipal Code. There will be no new construction which will not impact the density; and there is no proposed change in the use and the site is relatively flat, having an average slope of less than 20 percent. Therefore, a CEQA exemption can be issued under Section 15305.
7. **Planned Development Permit Findings:** Chapter 20.100 of the San José Municipal Code establishes evaluation criteria for the issuance of a Planned Development Permit. These criteria are applied to the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in the proposed permit. In order to make the Planned Development Permit findings pursuant to Section 20.100.720 of the San José Municipal Code and recommend approval to the City Council, Planning Commission must determine that:

1. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan;

Analysis: As described in the General Plan conformance analysis, the project is consistent with the General Plan land use designation of Transit Residential and Neighborhood/Community Commercial, and supports General Plan policies related to Affordable Housing, Efficient Use of Residential and Mixed-Use Lands, and Land Use /Transportation Diagram. The rezoning and planned development permit would allow for the continued use of the site as senior housing and multi-family residential adjacent to a transit center, furthering the General Plan goals to reduce auto dependency. In addition, the continued use of the project as a multi-family and affordable housing project supports the General Plan's goals for affordable housing.

2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property;

Analysis: As described above, the project would conform in all respects to the Planned Development Zoning's Development Standard. The project is consistent with the required parking ratio and maintains all the required setbacks and height limits.

3. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency;

Analysis: The project is subject to and conforms to the Council Policy 6-30 Public Outreach Policy for Pending Land Use and Development Proposals. An on-site notice was posted on the subject property and staff responded to phone calls from the public regarding the project.

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious;

Analysis: The project does not involve any new construction or use.

5. The environmental impacts of the project, including, but not limited to aesthetics, air quality, noise, and transportation/traffic, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

Analysis: As the project does not involve any new construction or use, the project will not have an unacceptable negative effect on adjacent properties.

In accordance with the findings set forth above, a Planned Development Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. This City Council expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the

owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the permittee fail to file a timely and valid appeal of this Planned Development Permit within the applicable appeal period, such inaction by the permittee shall be deemed to constitute all of the following on behalf of the permittee:
 - a. Acceptance of the Planned Development Permit; and
 - b. Agreement by the permittee to be bound by, to comply with, and to do all things required of or by the permittee pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 of the San José Municipal Code applicable to such Permit.
2. **Permit Expiration.** The Planned Development Permit shall automatically expire two (2) years from and after the date of issuance hereof by the City Council, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the City Council. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20 of the San José Municipal Code. The Permit Adjustment/Amendment must be approved prior to the expiration of this Planned Development Permit.
3. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that (1) no vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region; (2) substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority; (3) issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.

4. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled, "Monte Vista Gardens," dated received on March 7, 2019, on file with the Department of Planning, Building and Code Enforcement, as may be amended subject to City's approval, and to the San José Building Code (San José Municipal Code, Title 24), as amended. The plans are referred to herein as the "Approved Plan Set."
5. **Conformance to PD99-039.** Unless specifically modified with this permit, this project shall conform to all of the requirements of the Planned Development Permit PD99-039.
6. **Planned Development District Effectuated.** Once this Planned Development Permit is accepted, the use of land covered by the Permit shall only be land uses consistent with the Planned Development Zoning District and only upon issuance of a Planned Development Permit for those uses.
7. **Scope and Use Authorization of the Planned Development Permit.** This Planned Development Permit allows the continued use of the site for the existing multi-family development, senior housing development, and Alum Rock Transit Center on a 9.3-gross acre site, in accordance with the prior approved development plans (File PD99-039) and uses consistent with the General Development Standards of the Planned Development Zoning District.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as conditioned.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code.
10. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council, as applicable, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.100 of Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby **approved**.

EFFECTIVE DATE

The effective date of this Permit (File No. PD17-026) shall be the effective date of the Planned Development Rezoning Ordinance for File No. PDC17-054 approved for publication on _____, 2019 (the "Planned Development Rezoning Ordinance") and shall be no earlier than the effective date of said Planned Development Rezoning Ordinance.

ADOPTED this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

EXHIBIT A

For APN/Parcel ID(s): 484-44-059

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

ALL OF PARCEL 3, AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 16, 1999 IN BOOK 721, OF MAPS, AT PAGES 39, 40 AND 41.

PARCEL TWO:

EASEMENTS CONTAINED IN THAT CERTAIN QUITCLAIM DEED TO MONTE VISTA GARDENS FAMILY HOUSING, L.P., A CALIFORNIA LIMITED PARTNERSHIP RECORDED SEPTEMBER 1, 2000, INSTRUMENT NO. 15376544, OFFICIAL RECORDS, FOR SHARED PARKING STALLS AND FOR PRIVATE STREET AND INGRESS AND EGRESS OVER PARCEL 1, SAID EASEMENTS AND PARCEL ARE SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON NOVEMBER 16, 1999 IN BOOK 721, OF MAPS, AT PAGES 39, 40 AND 41. SAID EASEMENTS ARE APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 3 OF SAID PARCEL MAP, AND AS FURTHER CONTAINED IN THAT CERTAIN AGREEMENT REGARDING EASEMENT USE, EXECUTED BY AND BETWEEN ROEM DEVELOPMENT CORPORATION AND MONTE VISTA GARDENS FAMILY HOUSING, L.P., RECORDED JULY 31, 2001 AS INSTRUMENT NO. 15768900.

North parcel:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California described as follows:

All of Parcel 2, as Shown upon that certain Map entitled "Parcel Map", which Map was filed for record in the office of Recorder of County of Santa Clara, State of California, on November 16, 1999 in Book 721, of Maps, at pages 39, 40 and 41.

East parcel:

All that certain real property situated in the City of San Jose, County of Santa Clara, State of California described as follows:

All of Parcel 1, as Shown upon that certain Map entitled "Parcel Map", which Map was filed for record in the office of Recorder of County of Santa Clara, State of California, on November 16, 1999 in Book 721, of Maps, at pages 39, 40 and 41.