

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE REZONING CERTAIN REAL PROPERTY OF APPROXIMATELY 10.6-GROSS ACRES SITUATED AT THE SOUTHWEST CORNER OF NORTH CAPITOL AVENUE AND GIMELLI WAY (FORMERLY 641 NORTH CAPITOL AVENUE) FROM THE CP(PD) PLANNED DEVELOPMENT ZONING DISTRICT TO THE CP(PD) PLANNED DEVELOPMENT ZONING DISTRICT**

**WHEREAS**, all rezoning proceedings required under the provisions of Chapter 20.120 of Title 20 of the San José Municipal Code have been duly had and taken with respect to the real property hereinafter described; and

**WHEREAS**, the approximately 10.6 gross acre site encompassed by the proposed rezoning was the subject of that certain Initial Study (IS) and Mitigated Negative Declaration (MND) for the 641 North Capitol Avenue Mixed-Use Project (File Nos. PDC16-002, PD16-025, and PT16-035), which evaluated the impact of developing either: 1) up to 188 residential units, up to 108,000 square feet of commercial/office uses, and an approximately 1.07-acre publicly accessible park; or 2) up to 493 residential units, up to 39,000 square feet of commercial/office uses, and the approximately 1.07-acre publicly accessible park on an approximately 10.6 gross acre site located at 641 North Capitol Avenue, San José, California, which MND was certified and for which findings were adopted by the City Council on January 10, 2017 (Resolution No. 78053); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for the proposed subject rezoning to the CP(PD) Planned Development Zoning District; and

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**WHEREAS**, this Council of the City of San José has considered and approves the information contained in the MND and related City Council Resolution No. 78053 and the determination of consistency therewith prior to acting upon or approving the subject rezoning;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**SECTION 1.** The recitals above are incorporated herein.

**SECTION 2.** All that real property hereinafter described in this section, hereinafter referred to as "subject property," is hereby rezoned as CP(PD) Planned Development Zoning District. The base district zoning of the subject property shall be the CP Commercial Pedestrian Zoning District. The Planned Development zoning of the subject property shall be that development plan for the subject property entitled "General Development Standards – File No. PDC19-012" last revised on April 2, 2019.

Said General Development Plan is on file in the office of the Director of Planning, Building and Code Enforcement and is available for inspection by anyone interested therein, and said General Development Plan is by this reference adopted and incorporated herein the same as if it were fully set forth herein.

The subject property referred to in this section is all that real property situated in the County of Santa Clara, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

**SECTION 3.** The district map of the City is hereby amended accordingly.

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**SECTION 4.** The land development approval that is the subject of City File No. PDC19-012 is subject to the operation of Part 2.75 of Chapter 15.12 of Title 15 of the San José Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action 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 by the California Regional Water Quality Control Board for the San Francisco Bay Region.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**LEGAL DESCRIPTION**

Real property in the City of San Jose , County of Santa Clara, State of California, described as follows:

TRACT ONE:

PARCEL ONE:

PARCEL 1, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD ON JUNE 23, 2017, IN BOOK 904 OF MAPS AT PAGES 49-56, SANTA CLARA COUNTY RECORDS ("MAP").

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS, STORM DRAINAGE, SANITARY SEWER, STORM WATER LINE AND SURFACE DRAINAGE RELEASE AS AN APPURTENANCE TO PARCEL ONE ABOVE, OVER, UNDER AND UPON THOSE CERTAIN STRIPS OF LAND DESCRIBED AND DELINEATED AS "P.I.E.E." (PRIVATE INGRESS AND EGRESS EASEMENT), "P.S.D.E." (PRIVATE STORM DRAINAGE) "P.S.S.E." (PRIVATE SANITARY SEWER) AND "P.S.D.R.E." (PRIVATE SURFACE DRAINAGE RELEASE) AS SHOWN ON THE MAP AND AS MODIFIED BY DOCUMENT ENTITLED, "MODIFICATION OF EASEMENT AGREEMENT (PIEE)" RECORDED OCTOBER 2, 2017, INSTRUMENT NO. 23766730, OFFICIAL RECORDS.

TRACT TWO:

PARCEL ONE:

LOTS 1, 2 AND 3, AS SHOWN ON THE MAP ENTITLED "TRACT 10430, THE CAPITOL", FILED FOR RECORD ON JUNE 14, 2018 IN BOOK 914 OF MAPS AT PAGES 51 THROUGH 55, SANTA CLARA COUNTY RECORDS.

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS, STORM DRAINAGE, STORM WATER LINE AND SURFACE DRAINAGE RELEASE PURPOSES AS AN APPURTENANCE TO PARCEL ONE ABOVE, OVER, UNDER AND UPON THOSE CERTAIN STRIPS OF LAND DESCRIBED AND DELINEATED AS "P.I.E.E." (PRIVATE INGRESS AND EGRESS EASEMENT), "P.S.D.E." (PRIVATE STORM DRAINAGE) AND "P.S.D.R.E." (PRIVATE SURFACE DRAINAGE RELEASE EASEMENT) FOR SURFACE FLOW OF STORM WATER AS SHOWN ON THE MAP AND AS MODIFIED BY DOCUMENT ENTITLED, "MODIFICATION OF EASEMENT AGREEMENT (PIEE)" RECORDED OCTOBER 2, 2017, INSTRUMENT NO. 23766730, OFFICIAL RECORDS.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR PARKING PURPOSES AS AN APPURTENANCE TO PARCEL ONE ABOVE, UPON AND OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS "C.O.E." COVENANT OF EASEMENT (PARKING) OVER PARCELS 3 AND 4, AS SHOWN ON THE MAP AND AS MODIFIED BY DOCUMENT ENTITLED, "MODIFICATION OF EASEMENT AGREEMENT" RECORDED OCTOBER 2, 2017, INSTRUMENT NO. 23766731, OFFICIAL RECORDS.

TRACT THREE:

PARCEL ONE:

PARCEL 3, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD ON JUNE 23, 2017, IN BOOK 904 OF MAPS AT PAGES 49-56, SANTA CLARA COUNTY RECORDS ("MAP" ).

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS, STORM DRAINAGE, SANITARY SEWER, STORM WATER LINE, AND SURFACE DRAINAGE RELEASE AS AN APPURTENANCE TO PARCEL ONE ABOVE, OVER, UNDER AND UPON THOSE CERTAIN STRIPS OF LAND DESCRIBED AND DELINEATED AS "P.I.E.E." (PRIVATE INGRESS AND EGRESS EASEMENT), "P.S.D.E." (PRIVATE STORM DRAINAGE) AND "P.S.S.E." (PRIVATE SANITARY SEWER) AND "P.S.D.R.E." (PRIVATE SURFACE DRAINAGE RELEASE EASEMENT) FOR SURFACE FLOW OF STORM WATER AS SHOWN ON THE MAP AND AS MODIFIED BY DOCUMENT ENTITLED, "MODIFICATION OF EASEMENT AGREEMENT (PIEE)" RECORDED OCTOBER 2, 2017, INSTRUMENT NO. 23766730, OFFICIAL RECORDS.

TRACT FOUR:

PARCEL ONE:

PARCEL 4, AS SHOWN ON THE PARCEL MAP FILED FOR RECORD ON JUNE 23, 2017, IN BOOK 904 OF MAPS AT PAGES 49-56, SANTA CLARA COUNTY RECORDS ("MAP").

PARCEL TWO:

NON-EXCLUSIVE EASEMENTS FOR RECIPROCAL RIGHTS OF INGRESS AND EGRESS, STORM DRAINAGE, SANITARY SEWER, STORM WATER LINE, AND SURFACE DRAINAGE RELEASE PURPOSES AS AN APPURTENANCE TO PARCEL ONE ABOVE, OVER, UNDER AND UPON THOSE CERTAIN STRIPS OF LAND DESCRIBED AND DELINEATED AS "P.I.E.E." (PRIVATE INGRESS AND EGRESS EASEMENT), "P.S.D.E." (PRIVATE STORM DRAINAGE) AND "P.S.S.E." (PRIVATE SANITARY SEWER) AND "P.S.D.R.E." (PRIVATE SURFACE DRAINAGE RELEASE EASEMENT) FOR SURFACE FLOW OF STORM WATER AS SHOWN ON THE MAP AND AS MODIFIED BY DOCUMENT ENTITLED, MODIFICATION OF EASEMENT AGREEMENT (PIEE)" RECORDED OCTOBER 2, 2017, INSTRUMENT NO. 23766730, OFFICIAL RECORDS.

APN: 254-91-001 (Affects Parcel One of Tract One), 254-91-002 (Affects Parcel One of Tract Two), 254-91-003 (Affects Parcel One of Tract Three) and 254-91-004 (Affects Parcel One of Tract Four)