

ORDINANCE NO. NS-XXXX

AN ORDINANCE OF THE CITY COUNCIL APPROVING AMENDMENT APPLICATION NO. 2020-04 MODIFYING THE SUB-ZONING DESIGNATION OF THE PROPERTIES LOCATED AT 501, 507, 509, 515, AND 519 EAST FOURTH STREET AND THOSE AT 502, 506, 510, 514, 520 EAST FIFTH STREET FROM SPECIFIC DEVELOPMENT NO. 84, URBAN NEIGHBORHOOD 2 (UN-2) SUB-ZONE, TO THE URBAN CENTER (UC) SUB-ZONE

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines and declares as follows:

WHEREAS, Chapter 41, Article 1, Division 1, Section 41-1 of the Santa Ana Municipal Code establishes the necessity of segregating the location of residences, businesses, trades and industries; regulating the use of buildings, structures, and land regulation; the location, height, bulk and size of buildings and structures, the size of yards and open space; the City is divided into land-use districts of such number, shape and area as may be considered best suited to carry out these regulations and provide for their enforcement; and

WHEREAS, the regulations are considered necessary in order to: encourage the most appropriate use of land, conserve and stabilize property value, provide adequate open spaces for light and air and to prevent and fight fires, prevent undue concentration of population, lessen congestion on streets and highways, and promote the health, safety and general welfare of the people, all as part of the general plan of the City; and

WHEREAS, the City of Santa Ana has adopted a zoning map which has since been amended from time to time; and

WHEREAS, Andrew Nelson, with Red Oak Investments, LLC, representing Northgate Gonzalez Real Estate (hereinafter referred to as "Applicant"), seeks to develop the 4<sup>th</sup> and Mortimer Mixed-use Development Project ("proposed Project"), on a 1.423-acre site at 409 East Fourth Street and a 1.292-acre site at 501, 507, 509, 515, and 519 East Fourth Street and 502, 506, 510, 514, 520 East Fifth Street (collectively referred to as "509 East Fourth Street") in Santa Ana, California ("Project Site"); and

WHEREAS, during the City's entitlement and environmental review process, and in response to comments and concerns raised by the City and public, the Applicant has proposed the subject mixed-use Project; and

WHEREAS, the entire Project as currently proposed entails, among other things, (1) demolition of an existing commercial grocery market, surface parking lot, an existing commercial auto building, and ancillary structures on the Project Site; (2) redevelopment of the Project Site with a residential and commercial mixed-use development consisting mixed-use residential and commercial development consisting of two separate buildings located on two development sites at 409 (Site A) and 509 (Site B) East Fourth Street, with up to 169 residential rental units, 11,361 square feet of commercial space, 422 on-site parking spaces, and onsite landscaping and amenities; (3) approval of Site Plan Review No. 2020-03 to allow the construction of two structures over four stories in height; (4) approval of Variance No. 2020-06 to allow an increase in the allowable building size and massing for Site B; and (5) approval of Amendment Application (AA) No. 2020-04, which would change the zoning of Site B from Specific Development No. 84, Urban Neighborhood 2 (UN-2) sub-zone, to the Urban Center (UC) sub-zone; and

WHEREAS, the requested Amendment Application would modify the zoning designation of Site B from Specific Development No. 84, Urban Neighborhood 2 (UN-2) sub-zone, to Specific Development No. 84, Urban Center (UC) to facilitate the construction of the proposed Project; and

WHEREAS, in accordance with the California Environmental Quality Act (CEQA), the City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

Based on the substantial evidence set forth in the record, including but not limited to the Environmental Impact Report (EIR) for the Transit Zoning Code Project (SCH NO. 2006071100) and the 2020 4<sup>th</sup> and Mortimer Mixed-Use Development EIR Addendum, the City Council finds that an addendum is the appropriate document for disclosing the changes to the subject properties, and that none of the conditions identified in Public Resources Code section 21166 and State CEQA Guidelines section 15162 requiring subsequent environmental review have occurred, because:

- A. The project does not constitute a substantial change that would require major revisions of the 2010 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
- B. There is not a substantial change with respect to the circumstances under which the project will be developed that would require major revisions of the 2010 EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects.
- C. New information of substantial importance has not been presented that was not known and could not have been known with the exercise of reasonable diligence at the time the 2010 EIR was certified or adopted, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant

effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the Applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the Applicant declined to adopt.

WHEREAS, the 2020 4<sup>th</sup> and Mortimer Mixed-Use Development EIR Addendum analyzed the impacts related to the proposed amendment to the zoning map and Specific Development No. 84; and

WHEREAS, on October 12, 2020, the Planning Commission conducted a duly noticed public hearing to consider the 2020 4<sup>th</sup> and Mortimer Mixed-Use Development EIR Addendum, Site Plan Review No. 2020-03, Variance No. 2020-06, and Amendment Application No. 2020-04 described above. After hearing all relevant testimony from staff, the public and the City's consultant team, the Planning Commission voted to recommend that the City Council adopt a resolution approving an Addendum to the EIR for the Transit Zoning Code Project (SCH NO. 2006071100) and adoption of a mitigation monitoring and reporting program for Amendment Application No. 2020-04, and to adopt an ordinance approving Amendment Application No. 2020-04 for Specific Development No. 84 (SD84).

WHEREAS, on December 1, 2020, the City Council conducted a duly noticed public hearing to consider the 2020 4<sup>th</sup> and Mortimer Mixed-Use Development EIR Addendum and Amendment Application No. 2020-04 and at which hearing members of the public were afforded an opportunity to comment upon the Project. After hearing all relevant testimony from staff, the public and the City's consultant team, the City Council voted to adopt a resolution approving an Addendum to the Environmental Impact Report for the Transit Zoning Code Project (SCH NO. 2006071100) and adoption of a mitigation monitoring and reporting program for Amendment Application No. 2020-04, and to adopt an ordinance approving Amendment Application No. 2020-04 for Specific Development No. 84 (SD84).

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT: The City Council has reviewed and approved an Addendum to the Environmental Impact Report for the Transit Zoning Code Project (SCH NO. 2006071100) and adoption of a mitigation monitoring and reporting program for Amendment Application No. 2020-04.

SECTION 3. AMENDMENT APPLICATION: The Amendment Application consists of amendments to the zoning map changing the zoning of Site B from Specific Development No. 84, Urban Neighborhood 2 (UN-2) sub-zone, to the Urban Center

(UC) sub-zone, as shown in Exhibit A and Exhibit B respectively, attached hereto and incorporated herein by reference.

SECTION 4. LOCATION OF DOCUMENTS: The Amendment Application, Addendum to the Environmental Impact Report for the Transit Zoning Code Project (SCH NO. 2006071100) and all supporting documents are online, on file and available for public review at Santa Ana City Hall, 20 Civic Center Plaza, Santa Ana, California 92702.

SECTION 5. GENERAL PLAN CONSISTENCY: The City Council hereby finds that the proposed Amendment Application is compatible with the objectives, policies, and general plan land use programs in that:

- A. The proposed Amendment Application will not adversely affect the public health, safety, and welfare in that the Amendment Application will not result in incompatible land uses on adjacent properties, inconsistencies with any General Plan goals or policies, or adverse impacts to the environment.
- B. The amendment application to change the zoning designation of Site B from Specific Development No. 84, Urban Neighborhood 2 (UN-2) sub-zone, to the Urban Center (UC) sub-zone is consistent with Santa Ana Municipal Code section 41-593.1 for the following reasons:

(1) Protecting and enhancing the value of properties by encouraging the use of good design principles and concepts, as related to the division of property, site planning and individual improvements with full recognition of the significance and effect they have on the proper planning and development of adjacent and nearby properties.

The project's site plan has been designed to integrate the project site into the surrounding community. Both parking garages will provide vehicular gates separating available commercial parking spaces (e.g., guest, commercial, employee, etc.) from the residential parking areas. Vehicular access will be provided from Fifth Street by one right-turn only driveway west of Mortimer Street and one full access driveway east of Mortimer Street. The on-site circulation would provide safe access for vehicle-pedestrian traffic and the driveway would provide sufficient throating such that access to parking spaces is not impacted by internal vehicle queuing/stacking. Pedestrian access points would be provided by residential lobbies access along French and Mortimer Street. These access points have been designed to ensure the safety of residents and visitors of the project site, as well as commuters, employees, and residents of the surrounding community.

(2) Encouraging, securing and maintaining the orderly and harmonious appearance, attractiveness and aesthetic development of structures

and grounds in order that the most appropriate use and value thereof be determined and protected.

Both sites in the development have been carefully designed to be integrated within the existing development pattern in Downtown Santa Ana. Each site has its own unique architectural vernacular defined by scale, facade articulation, roof forms, materials, and detailing. Both of these blocks are designed in closely related and established California Contemporary architectural style, which complements the neighborhood in which the development is located.

The overall development will feature amenities commonly found at other upscale mixed-use developments in the region. These include a large courtyard with pool, spa, clubroom, fitness room, and landscaping in the center of Site A; a roof terrace on the 7th floor of Site A, overlooking Fourth and French streets; a leasing office and lounge in Site A; a bike locker in Site A; and a ground-floor lobby and resident amenity area in Site B. In addition, the project features private open space/decks for 59 units on Site A and 48 on Site B. The two-block project will be built and is conditioned to be managed as a single community and all amenities will be accessible to residents from either site.

(3) Providing a method whereby specific development plans are to be based on the general plan as well as other regulations, programs, and legislation as may, in the judgment of the city, be required for the systematic execution of the general plan.

The project site has a General Plan designation of District Center on Site A and Urban Neighborhood on Site B. The District Center-Downtown District and Urban Neighborhood land use designation accommodates high-rise office, commercial, and mixed-use residential uses with an emphasis on streets that accommodate all modes of transportation for this land use designation. The allowable floor area ratio (FAR) for District Center and Urban Neighborhood land use designation would be a maximum of 3.0 and 1.80, respectively. The proposed project would include construction of two new buildings, one of which would be seven stories in height with an FAR of 2.4 (Site A) and one that would be five stories in height with an FAR of 1.8 (Site B), consistent with the allowable FAR as part of the General Plan.

Furthermore, the project is consistent with several goals and policies of the General Plan, including the Economic



Development Element and Land Use Element. Land Use Element Goal 1 promotes a balance of land uses to address basic community needs. Policy 1.1 promotes medium density housing in and around the downtown area and Policy 1.2 supports high density residential development within the City's District Centers as a part of a mixed use development. The project will involve construction of a mixed-use residential and commercial building on Site A with a density of 69.6 du/ac, and a multi-family residential building on Site B with a density of 54.2 du/ac, on two adjacent city blocks in downtown, within the Transit Zoning Code area. Therefore, the Project will be consistent with the General Plan Land Use Element.

- 4) Recognizing the interdependence of land values and aesthetics and providing a method to implement this interdependence in order to maintain the values of surrounding properties and improvements and encouraging excellence of property development, compatible with the general plan for, and character of, the city, with due regard for the public and private interests involved.

The project is consistent with the Land Use Element Goal 2 which promotes land uses that enhance the City's economic and fiscal viability. Policy 2.7 support projects that contribute to the redevelopment and revitalization of the central City urban areas. The development proposes to redevelop to City blocks currently occupied by a commercial building, surface parking lot, and vacant and unimproved buildings and parcels. Policy 2.10 supports new development that is harmonious in scale and character with existing development in the area. Both sites in the development have been carefully designed to be integrated within the existing development pattern in Downtown Santa Ana. The mixture of land uses on the project site, including residential, commercial, and open space, will contribute to the formation a dynamic downtown core. The commercial and open space components will serve both residents and visitors of the project site, as well as the large daytime employee population working in the project site's immediate vicinity.

- (5) Ensuring that the public benefits derived from expenditures of public funds for improvements and beautification of streets and public facilities shall be protected by exercise of reasonable controls over the character and design of private buildings, structures and open spaces.

The project is consistent with Economic Development Element Goal 2 maintains and enhances the diversity of the City's economic base. Policy 2.3 encourages the development of

mutually beneficial and supportive business clusters within the community. The construction of this project will contribute toward an economically balanced community by providing housing and commercial retail opportunities (e.g., restaurant, retail sales, etc.) for different demographics in an area rich with employment opportunities, commercial development, and market-rate housing. In addition, a fiscal and economic impact analysis estimates that the proposed development will result net positive fiscal impacts to the City, the Business Improvement District, and over 800 new temporary or permanent jobs. Specifically, the analysis estimates \$5.4 million net new General Fund revenues associated with the project over a 25-year period. The mixed-use development will utilize existing water, sewer, and drainage infrastructure and will not result in the expansion of infrastructure. In addition, the Project will not result in the need for expansion of new or altered police or fire facilities.

#### SECTION 6. INDEMNIFICATION.

A. General Indemnification. The Applicant shall indemnify, protect, defend and hold the City and/or any of its officials, officers, employees, agents, departments, agencies, authorized volunteers, and instrumentalities thereof, harmless from any and all claims, demands, lawsuits, writs of mandamus, and other and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to arbitrations, mediations, and such other procedures), judgments, orders, and decisions (collectively "Actions"), brought against the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, any action of, or any permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City) for or concerning the project, whether such Actions are brought under the Ralph M. Brown Act, California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure sections 1085 or 1094.5, or any other federal, state or local constitution, statute, law, ordinance, charter, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that Applicant shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the Applicant of any Action brought and City shall cooperate with Applicant in the defense of the Action.

B. Further Indemnification. Within five (5) days of receipt of a referendum petition by the City, Applicant shall deposit Fifty Thousand Dollars (\$50,000) ("Referendum Deposit") with the City. City may use the funds to pay any and all costs associated with said referendum measure. If at any time the Referendum Deposit account has Five Thousand Dollars (\$5,000) or less remaining, Applicant shall, within

three (3) days of receiving notice from the City, deposit with the City additional funds as requested by the City to cover all costs and expenses associated with processing the referendum and holding the related election. Following certification of the election results, any funds remaining in the Referendum Deposit account shall be returned to the Applicant.

SECTION 7. If any section, subsection, sentence, clause, phrase or portion of this ordinance for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 8. CITY COUNCIL ACTIONS: The City Council hereby takes the following actions:

1. The City Council hereby adopts an Ordinance approving Amendment Application No. 2020-04 as follows:
  - A. Subject to compliance with the approved Addendum to the Environmental Impact Report for the Transit Zoning Code Project (SCH NO. 2006071100) and adopted mitigation monitoring and reporting program for Amendment Application No. 2020-04, the properties at 501, 507, 509, 515, and 519 East Fourth Street and 502, 506, 510, 514, 520 East Fifth Street shall be amended to Specific Development No. 84 Urban Center (UC) sub-zone as set forth in Exhibit A and Exhibit B, attached hereto and incorporated herein by reference.
  - B. The Amendment Application shall not take effect unless and until the Planning Commission reviews and approved the EIR Addendum, Environmental Review No. 2018-113, Variance No. 2020-06 and Site Plan Review No. 2020-03, and the City Council reviews and approves the EIR Addendum, Environmental Review No. 2018-113 for the subject project.

SECTION 9. EXECUTION OF ORDINANCE. The Mayor shall sign this Ordinance and the Clerk of the Council shall attest and certify to the adoption thereof.


ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Miguel A. Pulido  
Mayor

Ordinance No. NS-XXXX  
Page 8



APPROVED AS TO FORM:  
Sonia R. Carvalho  
City Attorney

By:   
Lisa E. Storck  
Assistant City Attorney

AYES: Councilmembers \_\_\_\_\_  
NOES: Councilmembers \_\_\_\_\_  
ABSTAIN: Councilmembers \_\_\_\_\_  
NOT PRESENT: Councilmembers \_\_\_\_\_

#### CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, DAISY GOMEZ, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXXX to be the original ordinance adopted by the City Council of the City of Santa Ana on \_\_\_\_\_, 2020, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: \_\_\_\_\_

\_\_\_\_\_  
Daisy Gomez  
Clerk of the Council  
City of Santa Ana