

ORDINANCE NO. 556

AN ORDINANCE OF THE CITY OF FOSTER CITY APPROVING A DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF FOSTER CITY, THE ESTERO MUNICIPAL IMPROVEMENT DISTRICT, AND GILEAD SCIENCES, INC. FOR THE PROCESSING AND CONSTRUCTION OF UP TO 1,200,480 SQUARE FEET OF BIOPHARMACEUTICAL OFFICE AND LABORATORY USES, ANCILLARY FACILITIES AND STRUCTURED AND AT-GRADE PARKING FACILITIES FOR THE GILEAD SCIENCES CORPORATE CAMPUS MASTER PLAN – 300-368 LAKESIDE DRIVE IN NEIGHBORHOOD VINTAGE PARK – GILEAD SCIENCES, INC. – APN'S: 094-901-290; -300; -310; -340; -370; -380; -390; -400; -410; 094-904-290; -300; -310; -320; -330; -340 – DA-08-003

CITY OF FOSTER CITY

WHEREAS, in accordance with California Government Code sections 65864 *et seq.* (the "Development Agreement Statute"), which authorizes cities to enter into agreements for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights, the City of Foster City ("City") enacted Resolution No. 80-73 to implement procedures for the processing and approval of development agreements; and

WHEREAS, the Development Agreement Statute and Resolution No. 80-73 require the City to hold a public hearing and make findings that the provisions of the development agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan; and

WHEREAS, Gilead Sciences, Inc. ("Gilead") owns and occupies as its corporate headquarters the approximately 40-acre site located at 300-368 Lakeside Drive, in the City of Foster City, designated as APNs: 094-901-290, -300; -310; -340; -370; -380; -390; -400; -410; 094-904-290; -300; -310; -320; -330; and -340 ("Property") currently developed with 17 buildings (comprising approximately 629,154 gross square feet) and 1,993 parking stalls; and

WHEREAS, Gilead desires to redevelop portions of the Property by, among other things, demolishing up to eight of the existing buildings and constructing up to eight new buildings (adding up to 571,326 square feet of additional building space), together with two parking structures and at-grade parking lots (adding up to 1,028 additional parking stalls) ("Project"); and

WHEREAS, Gilead, City and the Estero Municipal Improvement District ("District") desire to enter into the Development Agreement on file with the City Clerk in order to provide Gilead with some certainty in the land use regulatory process and to promote the development of the Project; and

WHEREAS, the City of Foster City, in accordance with the requirements of the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines adopted by the

Secretary of Resources, and the City of Foster City Environmental Review Guidelines, has prepared an Environmental Impact Report ("EIR") which analyzes the environmental impacts of the proposed Project (SCH #2008122064, EA-07-003); and

WHEREAS, a Notice of Preparation of the EIR (May 2008) was prepared and circulated for the Project as required by law; and

WHEREAS, a Draft EIR (January 2009) for the Project was prepared by LSA Associates, Inc. and circulated by the City for the period required by law; and

WHEREAS, the City transmitted for filing a Notice of Completion of the Draft EIR and in accordance with CEQA and the State CEQA Guidelines forwarded the Draft EIR to the State Clearinghouse for distribution to those state agencies that have discretionary approval or jurisdiction by law over natural resources affected by the Project; and

WHEREAS, the City provided notice to all interested persons and agencies inviting comments on the Draft EIR in accordance with the provisions of CEQA, the State CEQA Guidelines and the City of Foster City Environmental Review Guidelines; and

WHEREAS, a noticed Public Hearing to receive comments on the Draft EIR was held on February 5, 2009; and

WHEREAS, a Final Response to Comments Document (July 2009) was prepared by LSA Associates, Inc. incorporating responses to comments received on the Draft EIR; and

WHEREAS, the Planning Commission reviewed and considered the Final EIR (consisting of the Draft EIR and the Final Response to Comments Document) on December 3, 2009 and recommended certification of the Final EIR by the City Council by adoption of Resolution P-34-09; and

WHEREAS, the Planning Commission reviewed and considered the Final EIR and other written correspondence, verbal testimony, staff reports, and background reports and adopted findings, and recommended City Council adoption of such findings, regarding the significant environmental impacts of the proposed Project, including a Statement of Overriding Considerations by adoption of Resolution P-39-09; and

WHEREAS, on February 16, 2010, by Ordinance No. ____, the City Council approved a rezoning of the Property, together with the other properties comprising the ±132-acre Vintage Park Planned Development, from CM/PD (Commercial Mix/Planned Development) District to a CM/PD (Commercial Mix/Planned Development) District with an amended General Development Plan; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the Development Agreement at the Planning Commission meeting of December 3, 2009, and on said date the Public Hearing was opened, held and closed, at which time the Planning Commission recommended approval by adoption of Resolution P-36-09; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration of the proposed Development Agreement at the City Council meeting of January 19, 2010, and continued to February 16, 2010, and on said date the Public Hearing was opened, held and closed.

NOW, THEREFORE, BE IT ORDAINED by the City Council as follows:

Section 1. Findings. The City Council hereby makes the following findings:

- i) The Project proposed in the Development Agreement is consistent with the Land Use and Circulation Element and the Parks, Open Space and Conservation Element of the adopted City of Foster City General Plan and all of its goals, policies and land uses established for the Vintage Park Planned Development; and
- ii) The Development Agreement is in the public interest in that it offers Gilead the assurance needed in order to plan, finance, schedule and construct the Project over the term of the Development Agreement in accordance with approved plans and the granting of such assurance to Gilead will offer the City the best opportunity to secure the Project and its resulting tax, employment and associated economic benefits; and
- iii) Upon completion, the proposed Project will significantly improve the Vintage Park Planned Development, and will significantly improve and have a positive financial impact on the City's overall employment and tax base as indicated in the Fiscal Impact Analysis prepared by Economics Research Associates for the Gilead Corporate Campus Master Plan dated February 24, 2009; and
- iv) The proposed Development Agreement preserves City's rights to ensure, via a streamlined Use Permit/ Specific Development Plan design review process subject to the terms of the Development Agreement, a project design that meets all the applicable design criteria for buildings in the Vintage Park Planned Development, as amended; and
- v) The proposed Development Agreement is within the scope of the Gilead Sciences Corporate Campus Master Plan.

Section 2. Development Agreement. The City Council hereby: (i) approves the Development Agreement in the form on file with the City Clerk, subject to minor technical conforming changes as may be approved by the City Attorney; (ii) authorizes the Mayor to execute said Development Agreement; and (iii) authorizes the City Manager to take such further actions and execute such documents, including, without limitation, the attached Improvement Agreement, Utility Conveyance and Maintenance Agreement, Declaration of Restrictions on Land, and Grant of Easements Agreement, as are necessary to carry out the transactions set forth in the Development Agreement.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

This Ordinance was introduced and read on the 16th day of February, 2010, and passed and adopted on the 1st day of March, 2010, by the following vote:

AYES: Councilmembers Frisella, Kiesel, Koelling, and Mayor Wykoff


NOES: None

ABSENT: None

ABSTAIN: None



RICK WYKOFF, MAYOR

ATTEST


DORIS L. PALMER, CITY CLERK

*Councilmember Bronitsky recused himself from this item as he participated as a Planning Commissioner when this item was considered by the Planning Commission.

CERTIFICATE OF POSTING

I, Shannon Templin, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified Deputy City Clerk/District Secretary of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California.


I further certify to the proper posting of:

Ordinance No. 556 -- An Ordinance of the City Council of the City of Foster City Approving a Development Agreement By and Among the City of Foster City, the Estero Municipal Improvement District, and Gilead Sciences, Inc. for the Processing and Construction of Up to 1,200,480 Square Feet of Biopharmaceutical Office and Laboratory Uses, Ancillary Facilities and Structured and At-Grade Parking Facilities for the Gilead Sciences Corporate Campus Master Plan – Gilead Sciences, Inc. – DA-08-003 [First Reading February 16, 2010]

in the following four public places of the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California:

1. Federal Post Office, Charter Square
1050 Shell Boulevard
2. Recreation Center Lobby
650 Shell Boulevard
3. Council Chambers (not a mandatory posting site)
620 Foster City Boulevard
4. Foster City Public Library
1000 E. Hillsdale Boulevard

Executed at the **City of Foster City/Estero Municipal Improvement District**, Foster City, San Mateo County, California this March 8, 2010.



Shannon Templin
Deputy City Clerk/District Secretary