

**ORDINANCE NO. 2021-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AMENDING ORDINANCE NO. 01-06 AND APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT DA-00-04 BETWEEN THE CITY OF COSTA MESA AND IRVINE COMPANY LLC AS SUCCESSOR IN INTEREST TO FSP TWO TOWN CENTER AND FIFTH STREET PROPERTIES-DS, LLC**

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY FIND AND DECLARE AS FOLLOWS:

WHEREAS, Pursuant to Ordinance No. 01-06, the City of Costa Mesa, FSP Two Town Center, LLC, and Fifth Street Properties-DS, LLC, entered in to that certain Development Agreement for Two Town Center and Downey Savings Development Properties dated as of July 27, 2001 (hereinafter, the "Development Agreement"), which provides for construction of the Two Town Center and Downey Savings Project (hereinafter, the "Project"), as defined in the Development Agreement;

WHEREAS, the Project is now known as Pacific Arts Plaza, and the Irvine Company, LLC (hereinafter, the "Irvine Company" or "Developer") purchased the property on which the Project was constructed in December 2010 and the Development Agreement was thereafter assigned to the Irvine Company; and

WHEREAS, the Developer has requested that the City extend the term and otherwise amend the provisions of the Development Agreement; and

WHEREAS, a public hearing was held before the Planning Commission on December 9, 2019 pursuant to the Procedures and Requirements for Consideration of Development Agreements set forth in City Council Resolution No. 88-53, regarding the proposed First Amendment to the Development Agreement (hereinafter, the "Amendment") at which time the Planning Commission considered testimony presented by the public and the Irvine Company and thereafter made recommendations of approval to the City Council on a 6-0 vote; and

WHEREAS, a public hearing was subsequently held on June 1, 2021 before the City Council pursuant to the requirements of Resolution No. 88-53, at which time the City Council considered testimony presented by the public and the Irvine Company and the recommendations of the Planning Commission regarding the proposed Amendment; and

WHEREAS, the Amendment is:

- (a) Consistent with the objectives, policies, general land uses and programs specified in the General Plan and with the General Plan as a whole and the North Costa Mesa Specific Plan;

- (b) Compatible with the uses authorized in, and the existing land use regulations prescribed for, the zoning district in which the real property is and will be located;
- (c) Is in conformity with and will promote public convenience, general welfare, and good land use practice; and

WHEREAS, the Amendment will not:

- (a) Be detrimental to the health, safety and general welfare;
- (b) Adversely affect the orderly development of property or the preservation of property values; and

WHEREAS, the Amendment will promote and encourage the development of the proposed project and will ensure the public benefits promised in the Development Agreement and the Amendment, by providing stability and certainty to Developer; and

WHEREAS, the City, pursuant to the provisions of the California Environmental Quality Act ("CEQA") (California Public Resources Code Sections 21000 et seq.) and State CEQA guidelines (Sections 15000 et seq.), the initial project was evaluated under Environmental Impact Report No. 1047 (SCH No. 2000041100) certified in February 2001 and Mitigated Negative Declaration for the high-rise building (approved in October 2002). In addition, the City has determined that the ordinance is not a "project" and further, that it is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment) such that no environmental review under CEQA is required; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

**NOW, THEREFORE, THE COSTA MESA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Findings and Declarations.** The above stated findings and declarations are true and correct.

**Section 2. Approval.** The City Council hereby approves, adopts and enters into the Amendment in the form attached hereto as Exhibit A and incorporates the Amendment herein by this reference.

**Section 3. Recordation.** Upon execution of the Amendment by all parties, the City Clerk is directed to record the Amendment pursuant to Resolution No. 88-53.

**Section 4. Environmental Compliance.** Pursuant to the provisions of the CEQA and State CEQA Guidelines the initial project was evaluated under Environmental Impact Report No. 1047 (SCH No. 2000041100) certified in February 2001 and Mitigated Negative Declaration for the high-rise building (approved in October 2002). In addition, the

City has determined that the ordinance is not a "project" and further, that it is exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15061(b)(3) (because it can be seen with certainty that the adoption of this Ordinance will not have an effect on the environment) such that no environmental review under CEQA is required

**Section 5. Inconsistencies.** Any provision of Ordinance No. 01-06 that is inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, are repealed or modified to that extent necessary to affect the provisions of this Ordinance.

**Section 6. Severability.** If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is 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 portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

**Section 7. Effective Date.** This Ordinance shall become effective thirty (30) days from its adoption.

**Section 8. Certification.** The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be posted or published in the manner as required by law

**PASSED AND ADOPTED this 15<sup>th</sup> day of June, 2021.**

  
\_\_\_\_\_  
John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Brenda Green, City Clerk

  
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Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )  
CITY OF COSTA MESA )

I, Brenda Green, City Clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 2021-10 was introduced and considered section by section at a regular meeting of said City Council held on the 1<sup>st</sup> day of June, 2021, and thereafter passed and adopted as a whole at the regular meeting of said City Council held on the 15<sup>th</sup> day of June, 2021, by the following roll call vote:

AYES: COUNCILMEMBERS: CHAVEZ, GAMEROS, HARLAN, HARPER, REYNOLDS,  
MARR, AND STEPHENS.

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this 16<sup>th</sup> day of June, 2021.

  
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Brenda Green, City Clerk