

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO,
CALIFORNIA, CANCELLING THE DEVELOPMENT
AGREEMENT BETWEEN THE CITY OF FRESNO AND
ASHLAN/HAYES NO. 1 L.P. AND ITS SUCCESSOR'S IN
INTEREST PURSUANT TO THE PROVISIONS OF
SECTION 65864 ET SEQ. OF THE GOVERNMENT CODE

WHEREAS, on May 20, 2008, the Council of the City of Fresno adopted Mitigated Negative Declaration finding for Environmental Assessment No. A-07-08/R-07-29/C-07-308/T-5891 dated March 13, 2008 (Ordinance No. 2008-32/Bill No. B-34); and

WHEREAS, on December 16, 2008, the Council of the City of Fresno adopted Ordinance No. 2008-78/Bill No. B-80 approving a Development Agreement with Ashlan/Hayes No. 1 L.P., a limited partnership, pursuant to the provisions of Section 65864 et seq., of the California Government Code; and

WHEREAS, the Development agreement applies to certain real property in the City of Fresno, County of Fresno, State of California, hereinafter referred to as the Subject Property and described as follows:

Parcel 1:

The North half of the Northwest quarter of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian in the City of Fresno, County of Fresno State of California, according to the Official Plat thereof.

Except the North 30 feet thereof heretofore conveyed to Fresno Traction Company.

1 of 6

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

Parcel 2:

The North one-half of the South one-half of the Northwest quarter of the Southeast quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof.

Parcel 3:

The South one-half of the South one-half of the Northwest quarter of the Southeast quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom the South 165.00 feet of the West 548.00 feet, as conveyed to David Scarabello, by Gift Deed dated May 21, 1985 as Document No. 85067612, of Official Records.

Parcel 4:

The North one-half of the North one-half of the Southwest quarter of the Southeast quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof.

Excepting therefrom all oil, gas and minerals previously reserved of record.

Parcel 5:

The North half of the North half of the Southeast quarter of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian.

Excepting therefrom the South 150 feet of the East 215 feet of the North half of the North half of the Southeast quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the most Westerly 660 feet of Parcel Map No. 4474, recorded in Book 31, Page 26 of Parcel Maps, Fresno County Records.

Parcel 6:

The South three-fourths of the Southwest quarter of the Southeast quarter and the West half of the South three-fourths of the Southeast quarter of the

Southeast quarter all quarter in Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof, Fresno County Records.

Excepting therefrom the South 287 feet of the North 474 feet of the West 440 feet of the South three-fourths of the Southwest quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the South 208 feet of the North 682 feet of the West 228 feet of the South Three-fourths of the Southwest quarter of the Southeast quarter of said Section 16.

Also excepting therefrom the South 326.00 feet of the East 295.00 feet of the West half of the South three-fourths of the Southeast quarter of the Southeast quarter of said Section 16.

Parcel 7:

The South half of the North half of the East half of the East half of the Southeast quarter of Section 16, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the United States Government Township Plat; and

WHEREAS, Ashlan & Hayes Investment, LLC has purchased the Subject Property and is the successor in interest to Ashlan/Hayes No. 1 L.P pursuant to Section 100 of the Development agreement and is therefore bound by the Development Agreement; and

WHEREAS, Ashlan & Hayes Investment, LLC has requested cancellation of the Development Agreement and does not intend to enter in to an Assumption Agreement pursuant to Section 105.1 of the Development Agreement; and

WHEREAS, pursuant to Section 65868 of the California Government Code, a development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest; and

WHEREAS, pursuant to Section 65867, the Planning Commission of the City of Fresno conducted a duly noticed public hearing on March 18, 2015 on the proposed cancellation of the Development Agreement, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission adopted Resolution No. 13319, recommending cancellation of the Development Agreement in its entirety, to the Council of the City of Fresno; and

WHEREAS, on March 26, 2015 the Council of the City of Fresno conducted a duly noticed public hearing on the proposed cancellation of the Development Agreement in its entirety, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Council of the City of Fresno has considered all written and oral testimony on this matter.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct and adopted as findings.

SECTION 2. Findings. The Council of the City of Fresno finds in its own independent judgment that:

- a. Ashlan & Hayes Investment, LLC has requested cancellation of the Development Agreement in its entirety.
- b. Cancellation of the Development Agreement in its entirety is in the best interests of the City of Fresno
- c. All noticing and public hearing requirements have been completed in compliance with the California Government Code.

d. The Development Agreement is hereby cancelled in its entirety, and all rights of Ashlan & Hayes Investment, LLC under the Development Agreement are hereby terminated.

e. Termination of the Development Agreement shall not prevent Ashlan & Hayes Investment, LLC from constructing or completing improvements authorized pursuant to other validly issued permits, approval or entitlements, provided the City of Fresno may take any action permitted by law to prevent, stop, or correct any violation of law occurring after cancellation of the Development Agreement

f. Any future development on the Subject Property will require compliance with the development standards and process requirements in place at the time of submittal.

SECTION 3. Severability.

If any section, subsection, sentence, clause, phrase, or word in this Ordinance is for any reason held to be unconstitutional, unlawful, or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council of the City of Fresno hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful, or otherwise invalid.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2015.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2015
Mayor Approval/No Return: _____, 2015
Mayor Veto: _____, 2015
Council Override Vote: _____, 2015

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
Talia Kolluri-Barbick [Date]
Senior Deputy City Attorney

TKB:elb [67337elb/tkb] 3/19/15 Ordinance