RECOMMENDED FINDINGS

California Environmental Quality Act (CEQA) Findings and Analysis

FINDINGS

1. Based upon the testimony and information presented at the Zoning Administrator hearing on February 13, 2019, including the staff report prepared in advance of the hearing, which is incorporated by reference (“Staff Report”), and upon review and consideration of the environmental documentation prepared, including but not limited to the Program EIR for the "Downtown Improvement Program Update" certified on June 17, 2003 as amended and the Special Development Permit MND adopted on August 17, 2004, which are incorporated by reference, the Zoning Administrator finds that the Project is within the scope of previous environmental analysis in accordance with CEQA Guidelines Section 15168(c), and that the Project would not result in any new significant environmental effects or a substantial increase in the severity of any previously identified effects beyond those disclosed and analyzed in the Program EIR and MND, nor would new mitigation be required for the Project. Therefore, the Zoning Administrator further finds subsequent environmental review is not required.

2. The Zoning Administrator finds that, for the reasons set forth in the Staff Report, the Project meets each of the required conditions to qualify for a categorical exemption from CEQA as a project resulting in minor alterations in land use limitations described in Section 15305 of the CEQA Guidelines, and none of the exceptions to the exemptions specified in CEQA Guidelines Section 15300.2 have occurred. In addition, it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment per CEQA Guidelines Section 15061(b)(3). Therefore, the Zoning Administrator finds that no EIR or negative declaration need be prepared for the Project because it is categorically exempt from CEQA.

BACKGROUND

In 2003, the City prepared a Program EIR for the "Downtown Improvement Program Update" project (the "Program EIR"). The Downtown Improvement Program Update included amendments to the General Plan, Downtown Specific Plan and the Downtown Redevelopment Plan to accommodate a build-out of approximately 2,520 residential units, 1.4 million square feet of retail and entertainment uses, 1.3 million square feet of office uses, and 12,240 square feet of public facility uses within a 150-acre area that includes the current Project site. The Program EIR fully analyzed the environmental effects of the Downtown Improvement Program Update, and the City certified the Final Program EIR on June 17, 2003. The Program EIR was modified by an addendum on July 13, 2004 to increase the build-out by an additional 98,000 square feet of office uses and 100 residential units (the "First Addendum").

The following year, the City approved an SDP for the development of approximately 1 million square feet of retail and entertainment uses, 275,000 square feet of office uses, and 292 residential units on the Project site, the impacts of which were analyzed in a Mitigated Negative Declaration tiered off-of the Program EIR pursuant to CEQA Guidelines Section 15168(d) (the "2004 MND"). The 2004 MND and site-specific mitigation measures were approved on August 17, 2004.

In 2007, the City prepared a second addendum to the Program EIR to analyze the impact of increasing the office uses permitted on the Project site by an additional 40,000 square feet and adding a 200-room hotel in lieu of an equivalent amount of office space analyzed in the Program EIR (the "Second Addendum"). On February 6, 2007, the City approved the Second Addendum, concluding that the modifications would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First Addendum) and the 2004 MND. Later that year, the City approved the development of approximately 884,271 square feet of retail and entertainment uses, 322,000 square feet of office uses, 292 residential units, and a 200-room hotel on the Project site pursuant to a third addendum to the Program EIR adopted on July 9, 2007 (the "Third Addendum," or collectively with the First and Second Addenda, the "Addenda").

The City concluded that the Third Addendum would not result in any significant environmental effects that had not been analyzed in the Program EIR (as modified by the First and Second Addenda) and the 2004 MND. The City determined that subsequent minor modifications to the SDP for the Project in 2008 and 2010 were within the scope of the Program EIR (as modified by the Addenda) and the 2004 MND and that none of the conditions specified in CEQA Guideline Section 15162 requiring subsequent environmental review had occurred.

In 2016, the City Council approved a Special Development Permit to amend the Final Conditions of Approval for the Sunnyvale Town Center project, including allowing rental housing units with a ground floor leasing office; allowing temporary parking lot and landscaping improvements at Redwood Square; adding allowable ground floor uses; clarifying the expiration of the Special Development Permit design approvals; and updating conditions of approval to meet current City policies and standards pertaining to public improvements, green building and affordable housing. The City Council found that these actions were within the scope of the previous environmental analysis pursuant to CEQA Guidelines 15168(c)(2) and in addition the actions were categorically exempt pursuant to CEQA Guidelines 15304 and 15305.

FINDING 1: PROJECT'S EFFECTS COMPARED TO PREVIOUS ENVIRONMENTAL ANALYSIS

The approved CityLine project (formerly Sunnyvale Town Center) is in Block 18 of the Downtown Specific Plan and includes a mix of uses analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND. Sub-block 5, bound by McKinley Avenue to the north, Sunnyvale Avenue to the east, Iowa Avenue to the south and Murphy Avenue to the west, was approved with a two-story commercial building primarily facing

McKinley Avenue. The building is currently under construction. The first floor will contain a grocery store, while the second floor will contain a movie theater.

The current project is to allow full alcohol sale and service within a food establishment in the approved grocery store. No additional changes to the approved grocery use or to the building exterior are proposed. Pursuant to CEQA Guidelines Section 15162, no subsequent environmental review shall be required when, as here, an EIR has been certified or a negative declaration has been adopted for a project unless certain events have occurred. As explained below, none of the conditions specified in CEQA Guidelines Section 15162 requiring subsequent or supplemental environmental analysis have occurred; therefore, no new environmental analysis is required to comply with CEQA.

Specifically, the Project does not include any substantial changes in the Downtown Improvement Program Update of the previously-approved SDP, and there is no evidence in the record that the Project would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects necessitating major revisions to the Program EIR (as modified by the Addenda) or the 2004 MND. Similarly, there is no evidence in the record that substantial changes have occurred with respect to the circumstances under which the Project is to be undertaken that will require major revisions of the Program EIR (as modified by the Addenda) or the 2004 MND. Finally, there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the Program EIR (as modified by the Addenda) and the 2004 MND were adopted, in the record that shows new or considerable different significant effects, mitigation measures, or alternatives than were analyzed in the Program EIR (as modified by the Addenda) and the 2004 MND.

Because no new effects could occur or no new mitigation measures would be required under CEQA Guidelines Section 15162, CEQA Guidelines Section 15168(c) permits the City to adopt the Project as an activity within the scope of the Program EIR, and no new environmental document is required.

FINDING 2: EXEMPTIONS

In addition to the fact that the Project is within the scope of the Program EIR pursuant to CEQA Guidelines Section 15168(c), the Project is also categorically exempt from further CEQA review. Pursuant to CEQA Guidelines Section 15305, the Project qualifies for an exemption for minor alterations in land use limitations ("Class 5 Exemption"). In addition, it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment per CEQA Guidelines Section 15061(b)(3) (“General Rule Exemption”).

Class 5 Exemption
A Class 5 Exemption may be used to permit minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The Project site has an average slope of less than 20%, and the

Project's proposed alcohol service within the approved grocery store would not affect the land uses or density of development permitted on the site. Therefore, the Project qualifies for a Class 5 Exemption.

Exemption Exceptions
None of the exceptions to the exemption specified in CEQA Guidelines Section 15300.2 have occurred. Specifically, the Project site is not in a location where it would have any impact on: an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; scenic highways; or historical resources. There is no evidence in the record that the Project would contribute to a cumulative impact, nor that unusual circumstances would cause the Project to result in a significant effect. Finally, the Project site is not located on a hazardous waste site. Therefore, the exceptions to the exemptions are inapplicable, and no further environmental analysis is required under CEQA.

"General Rule" Exemption
It can be seen with certainty that there is no possibility that the project will have a significant effect on the environment per CEQA Guidelines Section 15061(b)(3). The current project is limited to alcohol service with food within the approved theater. No additional changes to the approved theater use or to the building exterior are proposed.

Special Development Permit

Goals and Policies that relate to this project are:

POLICY LT-4.2 *Encourage nodes of interest and activity, public open spaces, well planned development, mixed-use projects, signature commercial uses, and buildings and other desirable uses, locations, and physical attractions.*

GOAL LT-11 *Facilitate an economic development environment that supports a wide variety of businesses and promotes a strong economy within existing environmental, social, fiscal, and land use constraints.*

POLICY LT-12.6 *Create a strong, identifiable Downtown that offers regional and citywide shopping opportunities and entertainment.*

POLICY LT-13.6 *Support a regional commercial district in Downtown Sunnyvale.*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. ***Finding met***

   It is common to request full alcohol sale and service with food establishments, especially in such an active downtown setting with a mix of retail, office and residential uses. Therefore, the proposed project is consistent with the General Plan goals and policies listed above.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties. ***Finding met***

   The Department of Public Safety reviewed the proposed project and found no concerns. The approved grocery store was previously approved for beer and wine service, and the proposed food establishment is located towards the corner of Murphy Avenue and McKinley Avenue, which is the opposite side of the single-family homes along Sunnyvale Avenue. Therefore, staff finds neighborhood impacts to be minimal.