

## NOTICE OF SPECIAL MEETING

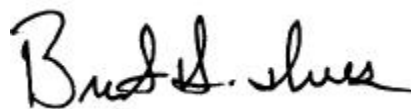
Pursuant to Section 54956 of the Government Code of the State of California, a Special meeting of the **Tracy City Council** is hereby called for:

**Date/Time:** **Wednesday, December 21, 2011, 5:00 p.m.**  
(or as soon thereafter as possible)

**Location:** **City Hall, Council Chambers**  
**333 Civic Center Plaza, Tracy**

Government Code Section 54954.3 states that every public meeting shall provide an opportunity for the public to address the Tracy City Council on any item, before or during consideration of the item, however no action shall be taken on any item not on the agenda.

1. Call to Order
2. Roll Call
3. Items from the Audience - *In accordance with Procedures for Preparation, Posting and Distribution of Agendas and the Conduct of Public Meetings, adopted by Resolution 2008-140 any item not on the agenda brought up by the public at a meeting, shall be automatically referred to staff. If staff is not able to resolve the matter satisfactorily, the member of the public may request a Council Member to sponsor the item for discussion at a future meeting.*
4. Approve Amendments to the City's Retail Incentive Program, which Include the Establishment of an Office/Industrial Incentive Program; Authorize Staff to Negotiate and Draft Financial Incentive Agreement(s); and Authorize the Use of Previously Appropriated RSP Funds to Negotiate and Draft the Agreement(s)
5. Adjournment



\_\_\_\_\_  
Mayor

### **December 19, 2011**

The City of Tracy complies with the Americans with Disabilities Act and makes all reasonable accommodations for the disabled to participate in public meetings. Persons requiring assistance or auxiliary aids in order to participate should call City Hall (209-831-6105), at least 24 hours prior to the meeting.

Any materials distributed to the majority of the Tracy City Council regarding any item on this agenda will be made available for public inspection in the City Clerk's office located at 333 Civic Center Plaza, Tracy, during normal business hours.

AGENDA ITEM 4

REQUEST

**APPROVE AMENDMENTS TO THE CITY'S RETAIL INCENTIVE PROGRAM, WHICH INCLUDE THE ESTABLISHMENT OF AN OFFICE/INDUSTRIAL INCENTIVE PROGRAM; AUTHORIZE STAFF TO NEGOTIATE AND DRAFT FINANCIAL INCENTIVE AGREEMENT(S); AND AUTHORIZE THE USE OF PREVIOUSLY APPROPRIATED RSP FUNDS TO NEGOTIATE AND DRAFT THE AGREEMENT(S)**

EXECUTIVE SUMMARY

Staff is recommending amendments to the City's Retail Incentive Program, which includes the establishment of an Office/Industrial Incentive Program. Staff is also requesting authorization to negotiate financial incentive agreement(s) with developer-owners and/or prospective tenants of our office and or industrial areas pursuant to the terms of the Office/Industrial Incentive Program. Finally, staff is requesting to use previously appropriated and unspent RSP funds to negotiate financial incentive agreement(s) pursuant to the Office/Industrial Incentive Program.

DISCUSSION

I. Background

On July 15, 2008, City Council approved a Retail Incentive Program (Resolution 2008-138.) The purpose of the Retail Incentive Program (RIP) is to attract "unique businesses" to the existing I-205 agglomeration area to leverage the strengths of this area with public sector support in the form of sales tax rebates. The RIP established eligibility criteria, standard thresholds for sales tax rebates, application procedures and provisions to be included in all performance contracts. A copy of the original Retail Incentive Program is included within Attachment A (Amended Retail, Office and Industrial Incentive Program).

On May 4, 2010, City Council approved an amendment to the Retail Incentive Program, which established the West Valley Mall Revitalization Program. Unlike the broad nature of the RIP, this amendment focused incentives specifically on retenanting larger anchor spaces at the West Valley Mall; more specifically, spaces that are over 50,000 square feet. This amendment also required certain findings to be met prior to any financial agreements being approved by Council. Those finding include:

- The net financial benefit to the public is larger than the financial incentive;
- The agreement represents a direct public benefit (as defined);
- There are identified City or other funds that are available to make the financial incentive; and
- The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

A copy of the West Valley Mall Revitalization Program is included within Attachment A (Amended Retail, Office and Industrial Incentive Program).

On June 15, 2010, City Council approved a Retail Incentive Agreement between the City of Tracy and the owners of West Valley Mall to secure Macy's as the anchor tenant to fill the vacant Gottschalks location. Macy's has been open a little over one year and, according to Mall representatives, have contributed to increased sales volumes for the entire mall.

## II. Proposed Office/Industrial Incentive Program

With the success of the amended Retail Incentive Program, staff proposes a similar incentive program be implemented to help attract office and industrial users that may contribute to the City's sales and use tax revenue. Sales and use tax revenue is typically generated through retail establishments. There are, however, certain office or industrial uses that can also generate sales and use taxes for a local jurisdiction. An example of the type of office and industrial use that might generate sales and use taxes is a software development firm selling to other businesses or a medical equipment manufacturer selling to hospitals.

In an effort to enhance our economic development program, staff recommends that Council adopt this incentive program. Having this program, coupled with the fact that the City does not have a utility user tax or a gross receipts business license tax, will provide Tracy with a very competitive advantage over other jurisdictions in attracting these types of uses. Staff is also reviewing other potential incentives for office and or industrial users that do not provide sales or use tax revenue to the City. Those programs will come back to Council as staff identifies potential funding sources and viable options.

If approved, the Office/Industrial Incentive Program will further the following goals of the Tracy General Plan, Economic Development Element:

- ED-3 A supportive business environment
- ED-6 Healthy, key economic activity centers
- ED-8 Responsiveness to change and opportunities
- ED-9 A financially sound and viable City of Tracy

Pursuant to the Program, City Council may approve a financial incentive with developer-owners, prospective tenants, or tenant representatives for clients looking to locate in our office and or industrial areas. Similar to the West Valley Mall Revitalization Program, the Office/Industrial financial incentive will be targeted for developers-owners, prospective tenants, or tenant representatives that meet all of the following criteria:

- Generate annual gross sales of \$100,000,000 or more;
- Generate sales or use tax to the City corresponding to the gross sales;
- Provide a minimum of 1,000 fte jobs;

The financial incentive may be either: (1) a sales or use tax rebate; or (2) direct financial assistance with security, tied to future sales and use tax generation. If direct financial assistance is requested, the funds must be used only for tenant improvements

associated with the specific location. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney. A copy of the Amended Retail, Office and Industrial Incentive Programs are shown within Attachment A. All financial incentive agreements must include a provision that the company promote, market, and hold at least one hiring fair exclusively to residents of Tracy prior to conduct hiring interviews for employees outside the area.

All financial incentive agreements must be approved by City Council only after making similar findings to the West Valley Mall Revitalization Program in that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);
3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

Negotiating and drafting the financial incentive agreement(s) will require significant staff time and the assistance of both attorneys and economic consultants. Council has already appropriated \$75,000 from the RSP fund to cover the costs of negotiating and drafting the financial incentive agreement(s) for the West Valley Mall Revitalization Program. Approximately \$35,000 is currently available for that program. Staff requests that those remaining funds be used to negotiate similar financial incentive agreements for the Office/Industrial Program as well.

#### FISCAL IMPACT

The Office/Industrial Incentive Program will not result in a fiscal impact to any existing fund balances. Partial sales tax rebates for a limited period of time will result in a loss of potential future revenue to the General Fund; however, one can argue that without the Office/Industrial Incentive Program the City would not realize even a portion of those sales tax revenues and therefore this item results in a positive impact to the City's General Fund.

#### RECOMMENDATION

Staff recommends that City Council approve a resolution:

1. Approving amendments to the City's Retail Incentive Program, which establishes an Office/Industrial Incentive Program;
2. Authorizing staff to negotiate and draft financial incentive agreement(s) with developers, prospective tenants, or tenant representatives for clients looking to locate in our office or industrial areas; and
3. Authorize staff to utilize previously appropriated and unspent West Valley Revitalization Program funds in the amount of \$35,000 for the Office/Industrial Program relative to negotiating and drafting financial incentive agreement(s).

Agenda Item 4  
December 21, 2011  
Page 4

Prepared by: Andrew Malik, Development Services Director

Approved by: Leon Churchill Jr., City Manager

Attachments – Attachment A – Amended Retail, Office, and Industrial Incentive Program

**CITY OF TRACY**

**RETAIL, OFFICE, AND INDUSTRIAL INCENTIVE  
PROGRAMS**

Approved by the Tracy City Council  
Resolution 2008-138

Revised: Resolution 2010-057

**Revised Resolution \_\_\_\_\_**

**Components**

- I – I-205 Retail Incentive Program
- II – West Valley Mall Revitalization Program
- III - Office and Industrial Incentive Program

# CITY OF TRACY RETAIL INCENTIVE PROGRAMS

## INTRODUCTION AND DEFINITIONS.

### A. Introduction.

The Retail Incentive Programs generally are meant to stimulate the private sector to invest in the future of Tracy so that Tracy can retain its existing share of the regional market in light of increasing regional competition.

The Retail Incentive Programs are consistent with the following goals of the Tracy General Plan, Economic Development Element:

- ED-2 Support for and promotion of existing businesses
- ED-3 A supportive business environment
- ED-6 Healthy, key economic activity centers
- ED-8, Responsiveness to change and opportunities
- ED-9, A financially sound and viable City

This Retail Incentive Programs has two major components:

1. I-205 Retail Incentive Program
2. West Valley Mall Revitalization Program

It is not the intent of these programs to divert sales tax dollars from other communities, in violation of Government Code sections 53084 and 53084.5.

### B. Definitions.

*Eligible applicant* means an applicant who meets the eligibility requirements for a particular program.

*I-205 Agglomeration area* means one of the areas along I-205 that is shown on Exhibit A, attached.

*Direct public benefits* means benefits to the City and community which justify a public incentive under this program. It may include, but is not limited to: (1) whether the business is a regional draw; (2) the amount of net new sales tax to be received by the City over a fixed period of time; (3) the creation of jobs; (4) capital investment by the business; (5) other benefits identified in the performance contract.

*Performance contract* means the contract containing retail incentives which may ultimately be signed between an applicant and the City. (See Sections II. E. and III. C. below).

*Primary trade area* means the area shown on Exhibit B, attached.

*Retail sales* means sales as defined in the Bradley-Burns Uniform Local Sales and Use Tax Law, at California Revenue and Taxation Code section 7200 and following.

*Unique business* means a business that is a regional draw for customers within a 30-mile radius. The applicant will need to demonstrate that consumers typically are willing to travel 30 minutes or more to their location, by providing data from other locations.



## **I-205 RETAIL INCENTIVE PROGRAM.**

### **A. Purpose:**

The purpose of the Original Retail Incentive Program is to attract “unique businesses” to the existing I-205 agglomeration area to leverage the strengths of this area with public sector support. This program is meant to attract new investment dollars by retailers that are not currently serving the Primary Trade Area. This program is intended to use sales tax rebate as the incentive.

### **B. Eligibility and Thresholds:**

To be an “eligible applicant” for the Original Retail Incentive Program, a business must meet all of the following criteria:

1. It must be the entity that will actually engage in “retail sales” within the City;
2. Its point of sale must be the City of Tracy;
3. It must be located within the I-205 Agglomeration area;
4. It must not currently be located within the primary trade area;
5. It must be a “unique business”, as defined;
6. It must provide 5 years worth of actual annual sales for its two closest locations;
7. It may not be a vehicle dealer or big box retailer, which is relocating from another jurisdiction within the same market area and is subject to the provisions of Government Code section 53084; and
8. It must generate a minimum of \$10 million in annual sales, and anticipate receiving approximately the amounts shown below as sales tax rebate.

If the eligible applicant generates a minimum of:	Then the applicant is eligible to receive a ___% sales tax rebate on the portion of sales tax collected by the City.
\$30M	50%
\$20M	40%
\$15M	30%
\$10M	20%

### **C. Procedure:**

1. Application. An Eligible Applicant must complete a standard application form. The application form requires each applicant to provide basic information about its business including, but not limited to: a description of the business; projected annual sales; the number of jobs it will create; and what improvements it will complete.

2. Evaluation and preparation of performance contract. Staff will review the application form for completeness. If it is complete and meets the thresholds specified in subsection B above, Staff will prepare a written performance contract (the "Performance Contract") in a form approved by the City Attorney, which includes (but is not limited to) the following provisions:

- a. Term, including the period of time the sales tax rebate remains in effect;
- b. A requirements not to open the same business within the Primary Trade Area for the term of the agreement;
- c. A requirement to pay prevailing wages pursuant to Labor Code section 1720 and following;
- d. A requirement that the business' books, records and accounts be open to and available for inspection by the City for monitoring purposes, upon reasonable notice;
- e. A requirement that the business obtain a City business license and comply with all laws and regulations; and
- f. A provision indemnifying the City against any claim of violation of Government Code sections 53084 or 53084.5 regarding financial assistance that affects another public agency.

3. City Council review and decision. The proposed performance contract will be submitted to the City Council for its review and decision. Approval of a performance contract is within the complete discretion of the City Council.

In making a decision whether to approve a performance contract, the City Council will take into account the direct public benefits to the City. (See Section I.B., Definitions, above.)

## II. TRACY MALL REVITALIZATION PROGRAM

### A. Goals and Objectives.

The purpose of the Tracy Mall Revitalization Program is to support and sustain the West Valley Mall, a vital part of the City's economic base and a significant source of sales tax revenue to the City. This program is intended to provide financial assistance in attracting and retaining an appropriate anchor tenant at the West Valley Mall.

### B. Program Guidelines.

The City Council may approve a financial incentive to the owners of the West Valley Mall and/or to a prospective tenant of the West Valley Mall. The financial incentive must be used only for tenant improvements to an anchor tenant space of 100,000 square feet or more. The financial incentive may be either: (1) a sales tax rebate; or (2) direct financial assistance with security, tied to future sales tax generation. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney.

Each financial incentive agreement must be approved by the City Council only after making findings that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);
3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

### C. City Council review and decision.

The proposed performance contract will be submitted to the City Council for its review and decision, based on the findings set forth in subsection III.B above. Approval of a performance contract is within the complete discretion of the City Council.

#### Attachments:

- A I-102 Retail Agglomeration map
- B Primary Trade Area

### III. OFFICE AND INDUSTRIAL INCENTIVE PROGRAM

#### A. Goals and Objectives.

The purpose of the Office and Industrial Incentive Program is to support and enhance the City's economic development efforts relative to attracting new businesses and creating jobs in the community. This program is intended to provide financial incentives to eligible developer-owners, prospective tenants, or tenant representatives for clients looking to locate in the City's office or industrial areas.

#### B. Program Guidelines.

The City Council may approve a financial incentive with developer- owners, prospective tenants, or tenant representatives for clients looking to locate in our office and or industrial areas. The Office / Industrial financial incentive will be targeted for developers and or prospective tenants that meet the following criteria:

- Generate annual gross sales of \$100,000,000 or more;
- Generate sales or use tax to the City corresponding to the gross sales;
- Provide a minimum of 1,000 fte jobs;

The financial incentive may be either: (1) a sales or use tax rebate; or (2) direct financial assistance with security, tied to future sales and use tax generation. If direct financial assistance is requested, the funds must be used only for tenant improvements associated with the specific location. The details of the financial incentive must be reflected in a written agreement, in a form approved by the City Attorney. All financial incentive agreements must include a provision that the company promote, market, and hold at least one hiring fair exclusively to residents of Tracy prior to conducting hiring interviews for employees outside the area.

Each financial incentive agreement must be approved by the City Council only after making findings that:

1. The net financial benefit to the public is larger than the financial incentive;
2. The agreement represents a direct public benefit (as defined);
3. There are identified City or other funds that are available to make the financial incentive; and
4. The financial incentive is secured by an appropriate form of financial security, if any direct financial assistance is involved.

**C. City Council review and decision.**

The proposed performance contract will be submitted to the City Council for its review and decision, based on the findings set forth in subsection III.B above. Approval of a performance contract is within the complete discretion of the City Council.

## RESOLUTION 2011-228

APPROVING AMENDMENTS TO THE CITY'S RETAIL INCENTIVE PROGRAM, WHICH INCLUDE THE ESTABLISHMENT OF AN OFFICE/INDUSTRIAL INCENTIVE PROGRAM; AUTHORIZING STAFF TO NEGOTIATE AND DRAFT FINANCIAL INCENTIVE AGREEMENT(S); AND AUTHORIZING THE USE OF PREVIOUSLY APPROPRIATED RSP FUNDS TO NEGOTIATE AND DRAFT THE AGREEMENT(S)

WHEREAS, On July 15, 2008, City Council approved a Retail Incentive Program, and

WHEREAS, On May 4, 2010, City Council approved an amendment to the Retail Incentive Program, which established the West Valley Mall Revitalization Program, and

WHEREAS, With the success of the amended Retail Incentive Program, staff proposes a similar incentive program be implemented to help attract office and industrial users that may contribute to the City's sales and use tax revenue, and

WHEREAS, the Office/Industrial financial incentive will be targeted for developers-owners, prospective tenants, or tenant representatives that meet all of the following criteria:

- Generate annual gross sales of \$100,000,000 or more;
- Generate sales or use tax to the City corresponding to the gross sales;
- Provide a minimum of 1,000 fte jobs;

WHEREAS, The financial incentive may be either: (1) a sales or use tax rebate; or (2) direct financial assistance with security, tied to future sales and use tax generation, and

WHEREAS, Negotiating and drafting the financial incentive agreement(s) will require significant staff time and the assistance of both attorneys and economic consultants, and

WHEREAS, Council has appropriated \$75,000 from the RSP fund to cover the costs of negotiating and drafting the financial incentive agreement(s) for the West Valley Mall Revitalization Program, and

WHEREAS, Appropriated and unspent West Valley Revitalization Program funds in the amount of \$35,000 are available for the Office/Industrial Program relative to negotiating and drafting financial incentive agreement, and

WHEREAS, The Office/Industrial Incentive Program will not result in a fiscal impact to any existing fund balances. Partial sales tax rebates for a limited period of time will result in a loss of potential future revenue to the General Fund; however, one can argue that without the Office/Industrial Incentive Program the City would not realize even a portion of those sales tax revenues and therefore this item results in a positive impact to the City's General Fund;

NOW, THEREFORE, BE IT RESOLVED That City Council:

1. Approves amendments to the City's Retail Incentive Program, which establishes an Office/Industrial Incentive Program;

2. Authorizes staff to negotiate and draft financial incentive agreement(s) with developers, prospective tenants, or tenant representatives for clients looking to locate in our office or industrial areas; and
3. Authorizes staff to utilize previously appropriated and unspent West Valley Revitalization Program funds in the amount of \$35,000 for the Office/Industrial Program relative to negotiating and drafting financial incentive agreement(s).

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The foregoing Resolution 2011-228 was adopted by the Tracy City Council on the 21<sup>st</sup> day of December, 2011 by the following vote:

AYES: COUNCIL MEMBERS: ABERCROMBIE, ELLIOTT, RICKMAN, MACIEL

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: IVES

ABSTAIN: COUNCIL MEMBERS: NONE

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MAYOR PRO TEM

ATTEST

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CITY CLERK