

RESOLUTION 2016-115

REPEALING RESOLUTION 2004-368 AND ESTABLISHING REVISED PROCEDURES AND REQUIREMENTS FOR THE CONSIDERATION OF DEVELOPMENT AGREEMENTS

WHEREAS, On November 16, 2004, pursuant to authorization granted in Government Code sections 65864 et seq., the City Council adopted Resolution 2004-368, establishing procedures and requirements for consideration of development agreements, and

WHEREAS, On June 16, 2015, the City Council discussed the development agreement procedures at a regular meeting and directed staff to prepare amendments to the existing procedures and requirements, including provisions related to required public benefits, and

WHEREAS, The City Council wishes to revise the procedures and requirements for future applications;

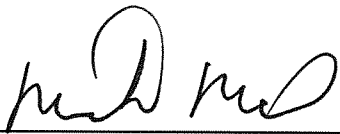
NOW, THEREFORE, the City Council of the City of Tracy resolves as follows:

1. Resolution 2004-368 is repealed in its entirety.
2. The Procedures and Requirements for Consideration of Development Agreements, set forth in the attached Exhibit "A", are adopted.

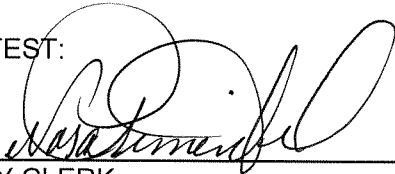
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This Resolution 2016-115 was passed and adopted by the Tracy City Council on June 7, 2016, by the following vote:

AYES: COUNCIL MEMBERS: MITRACOS, VARGAS, YOUNG, RICKMAN, MACIEL
NOES: COUNCIL MEMBERS: NONE
ABSENT: COUNCIL MEMBERS: NONE
ABSTAIN: COUNCIL MEMBERS: NONE



MAYOR

ATTEST:


CITY CLERK

EXHIBIT "A"

**REGULATIONS AND REQUIREMENTS
FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS**

PART I, APPLICATION

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PART I – APPLICATION

A. Authority for Adoption; Purpose; Consistency with State Law

These regulations are adopted under the authority of Government Code Sections 65864 et seq. The City's consideration and approval of a development agreement is discretionary; there is no requirement to approve such an agreement. The purpose of a development agreement is to assure the developer certain vested rights to proceed with a development over time. In exchange, the developer proposes and the City accepts certain public benefits that would not otherwise be required for the project. In any conflict or interpretation issue between these provisions and requirements of state law, state law will control.

B. Application

1. An application for a development agreement must be submitted to the Development Services ("DS") Department. The minimum requirements for the application and the information and data are set forth in Section B.2 below.
2. The application shall include, for each development agreement requested:

- a. signatures of all property owner(s);
- b. the proposed duration of the agreement (Gov't. Code §65865.2.);
- c. the proposed permitted uses, density or intensity of use, the maximum height and size of proposed buildings (Gov't. Code §65865.2.);
- d. proposed public benefit offered to the city as an incentive for consideration of the application, based on the examples set forth in Section C below;
- e. a map drawn to scale showing the property and the property lines for the properties within 300 feet of the exterior boundary lines of the subject property. This includes the names of all the streets and of the assessor's parcel numbers (APNs) of each parcel shown on the map;
- f. the names and mailing addresses as listed on the latest assessment roll of the owners of the property shown on the map;
- g. the legal description, the assessor's parcel number(s), and the street address(es) of the subject property;
- h. a list of other applications filed concurrently with the development agreement application;
- i. a signed City cost recovery agreement, under which the developer agrees to pay for staff and City consultant time in reviewing and processing the application(s) (Gov't. Code §; and
- j. other information the DS Director considers necessary to process the application..

C. Additional Public Benefit

A development agreement shall obligate the developer to provide additional public benefits, beyond what is already required under existing codes and master plans, as the City may deem necessary or appropriate. The additional public benefits are in addition to any fees, exactions or conditions which the City otherwise requires of the applicant as a condition of project approval, (and may include those which otherwise would require compliance with the Mitigation Fee Act (Government code Section 66000 and following), if there were no development agreement. The additional public benefits may include, but are not limited to, the following (including monetary contributions to the City for these purposes):

1. Construction, installation, and/or ongoing maintenance of public facilities and/or public improvements (other than those required as a condition of approval of a project);

2. Construction or installation of a public facility or improvement on the CIP project list that:
 - (a) benefits other property in addition to the subject property;
 - (b) is in accordance with a schedule that requires completion of the infrastructure before it is needed for the project; and
 - (c) is a condition of final map approval or the issuance of building permits for some or all components of the project.

The developer's cost may be subject to partial reimbursement over time as other properties develop;

3. Acquisition and/or transfer or dedication of land to the City (or other public agency) for public uses (other than as required as a condition of approval of a project); and
4. Other similar public benefits not specifically designated in this Policy.

D. Qualified Applicants

Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. The DS Director shall require an applicant to submit proof of his or her interest in the real property. The City may require an applicant or agent to submit a title report or other evidence to verify the applicant's legal or equitable interests in the subject property.

E. Qualified Property

1. Within City limits. The property to be the subject of the development agreement shall be situated within the City limits and shall represent an appropriate parcel or parcels, as to ownership and parcel configuration, size and location, as determined by the DS Director, to assure the development of the property consistent with the policies, goals, standards and objectives of City's General Plan, applicable specific plan, and City ordinances and policies pertaining to the property.

2. Outside City limits. Property not within the City limits but within the City's sphere of influence may be the subject of a development agreement conditioned upon the annexation of the property to the City within a specified time.

For property not within the City limits and subject to an existing development agreement with the county, Government Code section 65863.5 will apply.

F. Preliminary Review of Application

1. The Staff will review the application and accept it for filing if it is complete and accurate.

2. For a completed application, Staff will prepare a report and recommendation to the City Council. The Council will consider the application and determine whether the proposed public benefits (beyond what is otherwise required for the project) warrant undertaking negotiations with the applicant. The Council shall either reject the request or authorize staff to negotiate and process the development agreement application.

PART II - HEARINGS AND OFFICIAL ACTIONS

G. Contents

1. General. In addition to the mandatory requirements of Government Code Section 65865.2, the development agreement must include the following:
 - a. the additional public benefit, as described in subsection C above.
 - b. a requirement that the applicant hold harmless, indemnify and defend the City from suits and actions arising in connection with the development agreement, to the satisfaction of the City Attorney.
 - c. that the City may impose a later condition if: (a) the condition is required to comply with state or federal law, or (b) a failure to do so would place the residents or the immediate community, or both, in a condition dangerous to their health or safety, or both. (Gov't. Code §66498.1.)
 - d. The development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties or their successors. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Government Code section 65867. An amendment is subject to Section 65867.5, Findings of consistency. (Gov't. Code §65868.)
2. Subdivision. If the development agreement includes a subdivision of 500 dwelling units or more, it may not be approved unless the agreement provides that any tentative map prepared for the subdivision comply with Government Code section 66473.7 regarding sufficient water supply. (Gov't. Code §65867.5.)

H. Notice of Hearings; Environmental Review

1. Notice of hearings before the Planning Commission and the City Council to consider a development agreement shall be given in the manner provided in Government Code Section 65864 et seq.
2. The notice and public hearing on the development agreement may be combined with the notice and public hearing for an application for rezoning, development

review permit, subdivision map or other land use entitlement pertaining to the same property.

3. If a development agreement qualifies as a project under the California Environmental Quality Act and implementing regulations, it is subject to environmental review as required by applicable law.

I. Planning Commission

The Staff will submit the proposed development agreement to the Planning Commission for a public hearing when all of the necessary reports and recommendations are complete. The development agreement may be considered concurrently with other discretionary permits or approvals for the project.

The Planning Commission shall serve as the planning agency on applications as required by Government Code Section 65867, including determining its consistency with the General Plan, any applicable specific plan, city ordinances and regulations.

After the public hearing, the Planning Commission shall render its decision in the form of a resolution with written recommendation to the City Council. The report and recommendation shall include proposed findings as required by Section J (4) below.

J. City Council

1. After its public hearing, the City Council in the exercise of its legislative discretion shall determine whether or not to approve, modify or disapprove the development agreement.
2. Approval of a development agreement is a legislative act. Even if the findings set forth in subsection (4) below can be made, the City Council, in its sole discretion, may deny approval of the development agreement on the grounds that the development agreement is not in the public interest.
3. After the Planning Commission has made a recommendation to the City Council, the City Council's action to modify the proposal may, but need not be, referred back to the Planning Commission for its review and recommendation, without the necessity for a further public hearing before the Planning Commission.
4. The Council shall not approve the development agreement unless it (a) includes all of the mandatory requirements of Government Code section 65865.2 and (b) the Council finds the agreement is consistent with the General Plan and any applicable specific plan (Gov't. Code §65867.5.).

K. Ordinance Approving the Development Agreement

1. If the City Council approves the development agreement, it shall do so by the adoption of an ordinance setting forth the required findings and authorizing the Mayor to execute the development agreement.
2. After the ordinance approving the development agreement takes effect (30 days after adoption), the Mayor shall execute the development agreement on behalf of the City. The effective date of the development agreement is the effective date of the ordinance approving the agreement.
3. Within ten days after the City enters into a development agreement, the City Clerk shall record a copy with the County Recorder. (Gov't. Code §65868.5.)

PART III- DEVELOPMENT RIGHTS; PERIODIC REVIEW

L. Development Rights.

The City's regulations and official policies governing the permitted uses of land, density, design, improvement and constructions standards and specifications applicable to development of the property shall be those regulations and official policies in effect at the time of the agreement, unless otherwise provided in the development agreement. However:

1. the development agreement may not authorize regulations not permitted under the City's zoning ordinance.
2. the City may impose a later condition if: (a) the condition is required to comply with state or federal law, or (b) a failure to do so would place the residents or the immediate community, or both, in a condition dangerous to their health or safety, or both. (Gov't. Code §66498.1.)
3. in subsequent actions applicable to the property, a development agreement does not prevent the City from applying new regulations and policies which do not conflict with those in effect at the time of the agreement. (Gov't. Code §65866.)
4. if state or federal laws or regulations enacted after a development agreement has been entered into prevent or preclude compliance with one or more provisions of the development agreement, those provisions shall be modified or suspended as may be necessary to comply with the state or federal laws or regulations. (Gov't. Code §65869.5.)

M. Periodic Review

The DS Director shall on an annual basis and at any other time that the he or she determines to be appropriate, review the extent of good faith substantial compliance by the developer with the terms and conditions of the development agreement. The periodic review shall be limited in scope to compliance with the terms and conditions of the development agreement. The costs of

Exhibit "A" to Resolution 2016-115
Consideration of Development Agreement Applications
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notice and related costs incurred by the City for the annual review shall be borne by the developer. Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to enforce the provisions of a development agreement, nor shall a developer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.