



## CITY OF COMMERCE AGENDA REPORT

**TO:** Honorable City Council

**Item No.** \_\_\_\_\_

**FROM:** City Administrator

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COMMERCE APPROVING PROCEDURES AND REQUIREMENTS FOR THE PROCESSING OF DEVELOPMENT AGREEMENTS

**MEETING DATE:** April 17, 2018

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### **RECOMMENDATION:**

Adopt a Resolution approving procedures and requirements for the processing of Development Agreements.

### **BACKGROUND/ANALYSIS:**

A Development Agreement is essentially a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways. Development Agreements are contracts negotiated between project applicants and public agencies that govern the land uses that may be allowed in a particular project. These are subject to negotiation, and land uses must still be consistent with the local planning policies set forth in a city's general plan or applicable specific plan. Development agreements are not required, however when parties agree to participate in one, allowable land uses, and other terms and conditions of approval are negotiated between the parties, subject to the approval of the municipality. These agreements may allow for developments to vary from otherwise applicable zoning standards and land use requirements, however they must still advance a city's planning goals and policies.

Development Agreements have three defining characteristics:

- They allow greater latitude than other methods of approval to advance local land use policies in sometimes new and creative ways:
- They allow public agencies greater flexibility in imposing conditions and requirements on proposed projects; and
- They afford project proponents greater assurance that once approved, their projects can be built.

When a Development Agreement is adopted, they are done so via an ordinance. As such, they may supersede existing land use regulations as long as they are consistent with the general plan and any applicable specific plan. Therefore, they can afford both the public agency and applicant greater latitude concerning allowable land uses. They also allow for greater flexibility in imposing requirements on proposed development such as development conditions, exactions, and fees, because constraints and uncertainties that affect a local agency's ability to unilaterally impose such requirements do not apply unless the parties mutually agree upon the provisions of a Development Agreement.

The City of Commerce foresees the need for Development Agreements in select situations for future developments in the City. State law requires a city to adopt by ordinance or resolution procedures for processing Development Agreements. The subject matter of this report would establish these procedures for the City of Commerce. The proposed procedures and requirements for the processing of Development Agreements are as follows:

1. The City may enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of the property as provided in these procedures.
2. The City may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of Development Agreements.
  - 2.1. For any Development Agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Government Code Section 66006 with respect to any fee it receives or cost it recovers pursuant to these procedures.
3. A Development Agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.
4. The Development Agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.
  - 4.1. The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.
5. Unless amended or canceled pursuant to Paragraph 9, or modified or suspended pursuant to Paragraph 11, and except as otherwise provided in subdivision (b) of Government Code Section 65865.3 (annexation from County), a Development Agreement shall be enforceable by any party thereto notwithstanding any change in

any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Paragraph 6.

6. Unless otherwise provided by the Development Agreement, rules, regulations, and official policies governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications, applicable to development of the property subject to a Development Agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A Development Agreement shall not prevent a city, county, or city and county, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a Development Agreement prevent a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.
7. A public hearing on an application for a Development Agreement shall be held by the Planning Commission and by the City Council. Notice of intention to consider adoption of a Development Agreement shall be given as provided in Government Code Sections 65090 and 65091, the same as for a Zone Change, in addition to any other notice required by law for other actions to be considered concurrently with the Development Agreement.
8. A Development Agreement is a legislative act that shall be approved by ordinance and is subject to referendum.
  - 8.1. A Development Agreement shall not be approved unless the City Council finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.
  - 8.2. A Development Agreement that includes a subdivision, as defined in Government Code Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Government Code Section 66473.7.
9. A Development Agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Paragraph 7. An amendment to an agreement shall be subject to referendum.
10. No later than 10 days after a city, county, or city and county enters into a Development Agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

11. In the event that 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, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.
12. The Director of Public Works & Development Services or his/her designee shall conduct periodic review of a Development Agreement at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the Director of Public Works & Development services or his/her designee finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the City Council may terminate or modify the agreement after a public hearing procedure the same as for the approval of a Development Agreement.

#### **CONCLUSION:**

The City of Commerce does not currently have procedures in place for processing Development Agreements. These agreements can be useful tools to facilitate creative development that furthers the long range goals of a city while ensuring that public agencies receive much needed benefits such as infrastructure improvements or public open space. Staff is recommending the City Council adopt the subject resolution establishing a procedure for processing Development agreements.

#### **ALTERNATIVES:**

1. Adopt the subject resolution; or
2. Provide staff with further direction

#### **FISCAL IMPACT:**

Adoption of the subject resolution will not create any fiscal impact.

#### **RELATIONSHIP TO STRATEGIC GOALS:**

The proposed project is consistent with Economic Growth Guiding Principle 2 of the City's Strategic Action Plan. This Guiding Principle seeks to ensure that the City's development services are continually streamlined, efficient, customer focused and responsive to efficiently support local economic growth.

Prepared by: Matt Marquez, Deputy Director of Development Services

Recommended by: Maryam Babaki, Director of Public Works and Development Services

Reviewed by: Vilko Domic, Director of Finance

Approved as to form: Noel Tapia, City Attorney

Respectfully submitted: Edgar P. Cisneros, City Administrator

#### **ATTACHMENTS:**

1. Resolution