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January 4, 1985

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: CITY ATTORNEY 

SUBJECT: REGULATIONS ESTABLISHING PROCEDURES AND REQUIREMENTS FOR CONSIDERATION OF DEVELOPMENT AGREEMENTS

RECOMMENDATION

Adopt resolution to establish the potential of using development agreements for private projects.

ANALYSIS

The "Doctrine of Vested Rights" provides that a private developer is subject to any and all changes in land use laws until the developer is issued a building permit and performs substantial work in reliance thereon.

This doctrine means that a developer who expends substantial time and costs toward preparing plans for the approval process has no protection against a change in the land use laws.

In 1979 the State Legislature adopted Government Code Sec. 65864 et. seq. to authorize local governments to enter into development agreements and obviate the prohibition against "contract zoning." The purpose of development agreements is best described in the legislative findings that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public. (b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

A development agreement does not take the place of existing land use approval requirements. It is like a planned unit development which is used for complex development proposals to set forth the basic outline of the development. The difference is that under a development agreement both the city and the developer are committing themselves to proceed in accordance with the terms of the agreement. In effect, the city promises not to change its planning or zoning laws applicable to this development for a specified period of time. Thus future land use decisions are not made according to the city's laws and policies in effect at that time, but are made according to the laws in effect when the agreement was entered into. In return, the developer may agree to construct specific improvements, provide public facilities and services, develop according to a specified time schedule or make other commitments which the city might otherwise have no authority to compel a developer to perform. There are no precise requirements setting forth exactly what must be contained in a development agreement or exactly at what stage of the approval process a development agreement may be entered into. The laws applicable to development agreements were deliberately written to be flexible. They are designed to allow the city and the developer to enter into an agreement corresponding to the specific problems that are raised by a particular development. A development agreement does not prevent the city from subsequently denying or conditioning the project so long as such decisions are not based upon a zoning change or plan amendment which occurred after entering into the agreement. The city must periodically review the progress made by the developer to comply with the agreement. If the developer is not complying with the terms of the agreement, the city may terminate or modify the agreement.

Neither the city nor the developer is likely to find the development agreement useful for routine or ordinary development applications. Developers will most likely want to enter into a development agreement for large multi-phase developments where the developer is going to be called upon to make substantial investments at the beginning for public facilities and services and for planning and engineering for the entire project. In these types of projects the developer may be hesitant to proceed unless there is some assurance that these initial investments can be recovered by being able to complete the project or at least to be insured that the basic concept of the project will not be changed. The city may also benefit from the use of an agreement in this type of situation where the alternative is likely to be smaller, more fragmented developments. If the city has a specific plan or a community plan for an area where it wants all development to be integrated and coordinated, the development agreement can be used as an incentive to encourage developers to invest in more comprehensive projects.

A development agreement may also be utilized for smaller parcels where there are public service problems or where the city is trying to induce a particular property owner to dedicate or participate in the construction of new public facilities even though that property owner is not yet ready to develop the property. The city may also hold out a development agreement as an incentive to encourage developers to provide low income housing, extra open space or other provisions the city desires. If the city is hesitant to approve a project because it has no way of guaranteeing that the developer will perform as he has indicated, then the city may be willing to approve a desired zone change if it knows that a particular project will be constructed within a specified time period. Zoning normally can't provide this assurance. However, a development agreement can be used to restrict uses of the property and to indicate a time schedule for construction.

In order to enter into development agreements, the city must authorize development agreements and adopt a set of procedures for the consideration of the agreements. The agreement itself will look a lot like a planned unit development approval which will also contain elements generally found in annexation agreements, subdivision improvement agreements, or redevelopment agency owner participation agreements.

In conclusion, the development agreement is an important planning tool which may be used for the mutual benefit of the city and developers. The adoption of the proposed resolution merely establishes the potential use of future development agreements. There is nothing binding upon the City Council at this time. All decisions whether or not to enter into a development agreement, and if so, its specific terms and conditions, remain for future determination.

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