

## ORDINANCE 1144

### AN ORDINANCE OF THE CITY OF TRACY AMENDING SECTIONS 2.20.090, 10.20.040, 10.20.080 AND 10.08.970 OF THE TRACY MUNICIPAL CODE RELATING TO COST RECOVERY AGREEMENTS AND ANNEXATION APPLICATIONS

WHEREAS, the City has used "reimbursement agreements" in the past. Under a reimbursement agreement a developer is obligated to reimburse the City for staff and consultant time and expenses related to an application; and

WHEREAS, City staff has revised this form agreement to suit other circumstances when any applicant or project proponent will be using City staff or City consultant time; and

WHEREAS, the City has renamed the form agreement "cost recovery agreement" to better reflect its purpose; and

WHEREAS, a cost recovery agreement obligates an applicant or project proponent to pay the City for costs, but does not obligate the City to pay any unrecoverable costs. Because a cost recovery agreement does not create any obligation of the City to pay money, the proposed amendment to the Municipal Code authorizes the City Manager to approve cost recovery agreements. This is reflected in the amendment to the City's Contracts and Purchasing ordinance (Chapter 2.20); and

WHEREAS, the change to 'cost recovery agreement' terminology and other minor change are reflected in the proposed amendments too the Specific Plan ordinance (Chapter 10.20); and

WHEREAS, the proposed amendment also improves the City's zoning ordinance by providing more detailed procedures for the processing of annexation applications; and

WHEREAS, the adoption of this ordinance is not subject to the California Environmental Quality Act because it is not a project which has the potential for causing a significant effect on the environment. (CEQA guidelines, 14 Ca. Code of Regs. §15061 (b) (3)); and

WHEREAS, although portions of this ordinance amend provisions in Title 10 of the Municipal Code, Planning and Zoning, a hearing before the Planning Commission for amendments to Sections 2.20.090, 10.20.040, and 10.20.080 is not required pursuant to Government Code Section 65853 and 65850. The ordinance does not change any property from one zone to another or impose or modify any regulation covered by Section 65850; and

WHEREAS, a duly noticed public hearing was conducted by the Planning Commission on February 10, 2010 regarding the amendment to Section 10.08.970, and the Planning Commission passed Resolution number 2010-003 recommending that City Council introduce an ordinance amending Section 10.08.970; and

WHEREAS, a duly noticed public hearing was held before the City Council on March 2, 2010,

NOW, THEREFORE, The Tracy City Council hereby ordains as follows:

SECTION 1: Section 2.20.090, City Manager authority, of the Tracy Municipal Code is amended to read as follows:

**"2.20.090 City Manager authority.**

(a) The City Manager is authorized to enter into and sign on behalf of the City, without the prior approval of the City Council, a contract which:

(1) contains an initial maximum compensation figure of up to \$50,000.00 or less. As to a change order, the limit of authority may not exceed 10% of the original contract amount not to exceed a cumulative total of \$55,000.00. Cumulative additional change orders exceeding \$55,000.00 must be approved by the City Council;

(2) is not required by any applicable State law to be let to the lowest bidder;

(3) is a contract for City-managed professional services in an amount up to \$100,000.00 dollars if the following criteria are met:

- (a) a cost recovery agreement exists;
- (b) an applicant for development entitlements has deposited the required amount under the contract with the City; and
- (c) the funds are to be used for development related studies, such as an environmental impact report;

(4) which is a cost recovery agreement with an applicant or proponent, at no cost to the City; and

(5) is a right of entry agreement.

(b) In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable."

SECTION 2. Section 10.20.040, [Specific Plan] Initiation procedures, of the Tracy Municipal Code, is amended to read as follows:

**"10.20.040 Initiation procedures.**

(a) General. The proposal to prepare a specific plan may be initiated either by the City or by another applicant.

(b) City-initiated specific plan. A City-initiated proposal shall be submitted to the City Council for consideration. A written staff report shall include:

- (1) A description of the proposed project;

- (2) The reasons for the use of the specific plan process;
- (3) A vicinity map, drawn to scale, showing the proposed specific plan area and areas within one mile of the property;
- (4) A description of the current use of the property, and the addresses and assessor's parcel numbers for the properties, listed from the latest assessor's roll;
- (5) The planned land use designations for the properties shown on a map;
- (6) Proposed amendments to other, existing plans or proposals to amend zoning regulations;
- (7) A statement of how the specific plan implements the General Plan and any anticipated General Plan amendments; and
- (8) Any additional information required by the Director of Development and Engineering Services.

If the City Council agrees with the proposal or a modification, it shall adopt a resolution of intention to adopt a specific plan and related environmental review.

(c) Application by another party.

(1) Complete application. A party wishing the City to adopt a specific plan shall first submit a complete application to the Development and Engineering Services Department and pay an application fee as established by the City Council under section 10.20.080(a). The applicant is not required to own or otherwise control a majority of the properties within the proposed specific plan area. The application shall include a City application form with accompanying diagrams and other pertinent information, including the information set forth in subsection (b) above.

(2) Meeting with DES. Within 30 days of receipt of a complete application, the Development and Engineering Services Department shall schedule a meeting with the applicant to review the application. The Department may propose modifications to the specific plan boundaries and scope in order to facilitate comprehensive planning. Due to the significant role an adopted specific plan plays in the implementation of the General Plan, a project applicant should seek guidance from the Development and Engineering Services Department before submitting an application for a specific plan."

**SECTION 3.** Section 10.20.080, [Specific Plan] Fees, of the Tracy Municipal Code, is amended to read as follows:

**"10.20.080 Fees.**

(a) Application and processing. An applicant other than the City shall pay the application and processing fees established by City Council resolution. This includes processing fees, through a cost recovery agreement, intended to cover the costs under subsection (b).

(b) Specific plan fee. The City Council may establish a specific plan fee for applicants seeking a land use entitlement within the area of a proposed or an already-

adopted specific plan. (Gov't. Code §65456.) A specific plan fee shall only be established to reimburse the City for costs it incurs for preparation, adoption and administration of the specific plan (whether or not such costs are otherwise covered by a cost recovery agreement with a developer). It does not apply to a developer's own costs or its consultants' costs for a specific plan.

The purpose of the fee is to defray the cost of preparation, adoption and administration of the specific plan and to reimburse the City or other paying party for the costs of preparing the specific plan, including costs of consultants and environmental review. The fees charged shall be a prorated amount in accordance with the applicant's relative benefit derived from the specific plan. In the aggregate, the fees shall defray, but not exceed, the cost of preparation, administration and adoption of the specific plan.

(c) Infrastructure master plan costs. Because infrastructure master plans are a critical element of a workable specific plan, an applicant for a specific plan shall pay its fair share of the cost of the infrastructure master plans. The amount of the infrastructure master plan costs shall be established through one or more infrastructure master plan processing agreements and payment is a condition of proceeding with the specific plan application after the city council direction to proceed. (The infrastructure master plan processing agreements are distinguished from the cost of implementing the infrastructure master plans through impact fees or other measures.)"

SECTION 4. A new Section 10.08.515, Local Agency Formation Commission, is added to the definitions of Article 2 of Chapter 10.08, Zoning Regulations, of the Tracy Municipal Code, to read as follows:

**"10.08.515 Local Agency Formation Commission.**

"Local Agency Formation Commission" or "LAFCo" means the San Joaquin County Local Agency Formation Commission, established under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code section 56000 and following)."

SECTION 6. This Ordinance shall take effect thirty (30) days after its final passage and adoption.

SECTION 7. This Ordinance shall be published once in the Tri-Valley Herald, a newspaper of general circulation, within fifteen (15) days from and after its final passage and adoption.

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The foregoing Ordinance 1144 was introduced at a regular meeting of the Tracy City Council on the 2<sup>nd</sup> day of March, 2010, and finally adopted on the 16th day of March, 2010, by the following vote:

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| AYES:    | COUNCIL MEMBERS: ABERCROMBIE, MACIEL, TOLBERT, TUCKER, IVES |
| NOES:    | COUNCIL MEMBERS: NONE                                       |
| ABSENT:  | COUNCIL MEMBERS: NONE                                       |
| ABSTAIN: | COUNCIL MEMBERS: NONE                                       |

Signed: Brent H. Ives, Mayor  
Attest: Sandra Edwards, City Clerk