



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of December 11, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Patrick Tang, City Attorney

SUBJECT: Second Amendment to 2008 Hilltown Development and Owner Participation Agreement (“Development Agreement”) with Santa Clara Valley Housing Group (SCVHG) Extend Key Performance Dates by Four Months.

RECOMMENDATION: Receive staff report, Open, Conduct, and Close Public Hearing, and take the following actions:

Waive the First Reading and introduce an Ordinance of the City Council of the City of Hercules approving amendments to the Hilltown development agreement to extend key performance dates by four months. (Attachment 2).

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: On November 19, the Planning Commission approved Resolution 18-18 to recommend to the City Council the approval of the proposed amendments to the Development Agreement (Attachment 3).

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action.

DISCUSSION:

On April 24, 2018, the City Council approved an amendment to the existing Development Agreement for the Hilltown site, with the second reading of the Development Agreement amendment ordinance having taken place on May 8th. The main purpose of the approved amendment was to remove the Redevelopment Agency as a party to the Agreement and extend key performance dates in regard to the build-out of the project based on the original scope of development.

After the April approval, the Developer began to develop their entitlement application approval package. Subsequently, the Hilltown Developer was contacted by a big box retailer which expressed interest in the Hilltown site. On August 14, 2018, the City Council received a report from staff and

the Hilltown developer regarding this interest in the Hilltown site by a big box retailer which both staff and the Developer believed to be worth exploring. In order to do so, the Developer requested an extension to the key performance dates in the Development Agreement. The City Council expressed a willingness to do so, subject to validation of the big box retailer's interest, but did not take any formal action.

Since that time, the big box retailer and Developer did engage in an exchange of offers, which have been verified by staff. Unfortunately, the two parties were not able to reach agreement on terms. The Developer has submitted a formal request (Attachment 1) for a four month extension to their key performance dates which is the amount of time which was needed to explore this opportunity. On November 13, 2018, the City Council agreed to consider an extension to key performance dates.

Under the City's municipal code, the requested amendments to the Development Agreement are considered a major amendment requiring a review by the Planning Commission and an ordinance by the City Council. Planning Commission review occurred on November 19, 2018, and their approval resolution is attached (Attachment 3). The City Council's consideration of the Amendment starts with the noticed public hearing and introduction of the ordinance this evening, to be followed by the Ordinance adoption in January.

The amendment extends an April 2019 date for submission of an application for a tentative map together with payment of \$50,000 for prior environmental review to August 2019. If this deadline is met, the expiration date for the development agreement would be extended from August 2019 to December 2019.

ATTACHMENTS:

Attachment 1 – Developer Request

Attachment 2 – Ordinance & Development Agreement Amendment

Attachment 3 – Planning Commission Resolution



October 17, 2018

City of Hercules
Mr. David Biggs
111 Civic Drive
Hercules, CA 94547

RE: Hilltown Site

Dear David:

As I know you are aware, the deal we were attempting to negotiate with Costco has proven unfruitful. Their lack of being able to provide a reasonable, non-refundable deposit amount after an Initial Feasibility Period along with the length of time for entitlements and workplans that they insisted upon were too much to overcome.

I have instructed my team to resume activities toward the submission of our application in accordance with the Development Agreement.

Given the fact that we put our project on hold since early July, while exploring the feasibility with Costco and pursuant with comments we heard from several Councilmembers during our presentation/update in August, we are requesting adding four months to the timeline established in the Development Agreement.

Please identify what will be required of us so that the matter may be heard by Council at the earliest opportunity.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen E. Schott".

Stephen E. Schott

CC: Patrick Tang
Jim Sullivan
Cory Kusich

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