
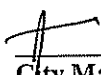




**CITY COUNCIL STAFF REPORT**

**MEETING DATE: FEBRUARY 25, 2009**

Agenda Item #	<u>6</u>
Prepared/Approved By:	
City Clerk	
Submitted By:	
City Manager	

**ADOPT ORDINANCE NO. 1916, NEW SERIES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MC-04-19: E. MAIN-THRUST/MARRAD (DIVIDEND)**

**RECOMMENDED ACTION(S):**

Waive the Reading, and Adopt Ordinance No. 1916, New Series, and Declare That Said Title, Which Appears on the Public Agenda, Shall Be Determined to Have Been Read by Title and Further Reading Waived.

**EXECUTIVE SUMMARY:**

On February 18, 2009, the City Council Introduced Ordinance No. 1916, New Series, by the Following Roll Call Vote: AYES: Carr, Lee, Librers, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

**FISCAL IMPACT:**

None. Filing fees were paid to the City to cover the cost of processing this application.

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**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF MORGAN HILL AMENDING THE  
DEVELOPMENT AGREEMENT FOR APPLICATION  
MC-04-19: E. MAIN-THRUST/MARRAD (DIVIDEND)**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY  
ORDAINS AS FOLLOWS:**

**SECTION 1.** The City Council has adopted Resolution No. 4028 establishing a procedure for processing Development Agreements for projects receiving allotments through the Residential Development Control System, Title 18, Chapter 18.78 of the Municipal Code.

**SECTION 2.** The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property (APN 726-16-028).

**SECTION 3.** The Planning Commission, pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code, awarded 34 building allotments for application MC-04-19: E. Main-Thrust/Marrad (Dividend): 13 allocations for FY 2006-07, 5 allocations for FY 2007-08, 8 allocations for FY 2008-09 & 8 allocations for FY 2009-10; and

**SECTION 4.** On July 19, 2006, the City Council adopted Ordinance Number 1782 which set a development schedule for the 34 building allocations (+1 replacement unit) awarded to MC-04-19: E. Main-Thrust/Marrad (Dividend); and

**SECTION 5.** References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill. These documents to be signed by the City of Morgan Hill and the property owner set forth in detail and development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

**SECTION 6.** Section 18.78.125.G of the Municipal Code allows the City Council to grant an Exception to Loss of Building Allotment (ELBA) if it finds that the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140, or extended delays in environmental review, permit delays not the result of developer inaction, or allocation appeals processing.

**SECTION 7.** The housing market has significantly slowed, and lenders are not approving funding for new housing development. Therefore the applicant is requesting to amend the development agreement to allow for an 8 month extension of the FY 2006-07 allocations, a 12 month extension of the FY 20007-08 and FY 2009-10 allocations and a 20 month extension of the FY 2008-09 allocations

**SECTION 8.** MODIFICATION TO DEVELOPMENT SCHEDULE. The Council hereby approves an amendment to the development schedule (known as Exhibit B of approved development agreement) for the 34 building allotments for application MC-04-19: E. Main-

Thrust/Marrad (Dividend) attached to this Resolution as Exhibit A; as attached in Exhibit A, and by this reference incorporated herein.

**SECTION 9.** The City Council hereby finds that the development agreement amendment approved by this ordinance is compatible with the goals, objectives, policies, and land uses designated by the General Plan of the City of Morgan Hill.

**SECTION 10.** Authority is hereby granted for the City Manager to execute all development agreements approved by the City Council during the Public Hearing Process.

**SECTION 11.** Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

**SECTION 12.** Effective Date Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Morgan Hill held on the 18<sup>th</sup> day of February 2009, and was finally adopted at a regular meeting of said Council on the    day of            2009, and said ordinance was duly passed and adopted in accordance with law by the following vote:

**AYES:            COUNCIL MEMBERS:**  
**NOES:            COUNCIL MEMBERS:**  
**ABSTAIN:        COUNCIL MEMBERS:**  
**ABSENT:         COUNCIL MEMBERS:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

\_\_\_\_\_  
**STEVE TATE, Mayor**

**☞ CERTIFICATE OF THE CITY CLERK ☜**

**I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA,** do hereby certify that the foregoing is a true and correct copy of Ordinance No. 1916, New Series, adopted by the City Council of the City of Morgan Hill, California at a regular meeting held on the <sup>th</sup> day of    2009.

**WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
**IRMA TORREZ, City Clerk**

**EXHIBIT B**

**DEVELOPMENT SCHEDULE MC 04-19: E.Main Thrust  
FY 2006-07, 13 allocations/FY 2007-08, 5 allocations  
FY 2008-09, 8 allocations/ FY 2009-10, 8 allocations**

	<b>Currently Approved Dates</b>	<b>Requested Date</b>
<b>I. COMMENCE CONSTRUCTION:</b>		
FY 2006-07 (13 units)	<del>10-31-09</del>	<i>06-30-10</i>
FY 2007-08 (5 units)	<del>10-31-09</del>	<i>10-30-10</i>
FY 2008-09 (8 units)	<del>10-31-09</del>	<i>06-30-11</i>
FY 2009-10 (8 units)	<del>06-30-10</del>	<i>06-30-11</i>

Failure to commence construction by the dates listed above shall result in the loss of building allocations. In such event, the property owner must re-apply under the development allotment process outlined in Section 18.78.090 of the Municipal Code if development is still desired.

An exception to the loss of allocation may be granted by the City Council if the cause for the lack of commencement was the City's failure to grant a building permit for the project due to an emergency situation as defined in Section 18.78.140 or extended delays in environmental reviews, permit delays not the result of developer inactions, or allocation appeals processing.

If a portion of the project has been completed (physical commencement on at least 18 dwelling units and lot improvements have been installed according to the plans and specifications), the property owner may submit an application for reallocation of allotments. Distribution of new building allocations for partially completed project shall be subject to the policies and procedures in place at the time the reallocation is requested.

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