

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-09-02

SUBJECT: POLICY GUIDANCE FOR DECISIONS ON EXCEPTION TO THE LOSS OF BUILDING ALLOCATION (ELBA) REQUESTS FILED BY DEVELOPERS

EFFECTIVE DATE: OCTOBER 22, 2009

REVISION DATE: MAY 6, 2015

ORIGINATING DEPARTMENT: COMMUNITY DEVELOPMENT DEPARTMENT

Under the city's Residential Development Control System (RDCS) ordinance, projects which have been awarded building allocations pursuant to Chapter 18.78.125 of the Morgan Hill Municipal Code may apply for an Exception to the Loss of Building Allocation (ELBA) pursuant to Municipal Code Section 18.78.125 G. This section provides that there are two factors that are taken into consideration by the City Council when deciding whether or not to grant an ELBA: 1) that the need for an ELBA is not the result of developer inaction; and 2) that the need for an ELBA is due to circumstances outside of the developer's control.

1) Developer Action/Inaction

A. Developer "Action" is defined by the completion of the following eight steps:

1. Planning applications (Zoning, Tentative Map, Development Agreement, Design Permit/Site Review) submitted
2. Planning applications approved
3. Final map/Improvement plans submitted
4. Final map/Improvement plans approved
5. Master plan check submitted
6. Master plan check approved.
7. Final map/Improvement plans recorded
8. Building permits issued/construction commenced

Projects that have completed steps 1-6 will be considered more favorably for extensions, as those actions demonstrate good faith effort by the developer toward completing the project. The Council will consider evidence of actions taken to move the project forward and keep project entitlements current. Such evidence could include correspondence/application/contract with lenders, builders or banks as well as actions such as keeping building plan checks and CEQA approvals current.

The City Council may consider an extension of allocation for a project that has not completed steps 1-6 but the developer must present evidence of circumstances outside developer control or other circumstances unique to the project that has precluded developer from completing steps 1-6. Such circumstance could include but not be limited to extended environmental processing requirements, need for information or approval by outside agencies, or a pending City-initiated general or specific plan amendment. A developer must be able to demonstrate timely submittals and that the developer has not contributed to the delay.

2) Circumstance beyond Developer's Control:

The housing market began to slow late in 2007, and by Fall 2008, the economy, housing market, and financial conditions were in severe distress. Without construction loans developers cannot move forward with projects, and consequently developers are unable to meet development schedule deadlines required by the RDCS and Development Agreements. The City Council will recognize the current severe recession in the housing market and lack of bank financing as circumstances for granting ELBAs. Once lending begins to stabilize and construction of residential projects resumes, the Council will no longer recognize lack of bank financing as a circumstance beyond the developer's control.

Stabilization will be generally defined as that at least three Morgan Hill projects (single family) have commenced construction, on phases consisting of at least ten homes, and construction loans are available with a loan to value ("LTV") of between 65% and 70%.

The Council may consider other circumstances beyond the control of the developer, which could be shown as preventing a project from proceeding or obtaining loans, which could still justify a further extension.

Procedures in accepting ELBA Requests (prior to building allotment expiration)

1) Timing of Request

Developers shall submit a ELBA request application to the Planning Division no later than 30-days prior to the commencement construction deadline of the building allotments requested for extension through the ELBA request.

2) Payment of Processing Fees

Developers shall pay fees for processing ELBA request and Development Agreement Amendment requests, as applicable in accordance with the City's adopted fee schedule.

This policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR