County of Fresno

Hall of Records, Rm. 301
2281 Tulare Street
Fresno, California
93721-2198

Legislation Details (With Text)

File #:	16-1303	**Name:**	Resolution Authorizing Director to execute agreements with requesting cities
		In control:	Public Works & Planning
On agenda:	9/27/2016	**Final action:**	9/27/2016
Enactment date:		**Enactment #:**	Resolution No. 16-372

Title: Adopt recommended resolution approving and authorizing Director of Department of Public Works and Planning, or his or her designee, to approve and execute agreements with requesting cities substantially in the form of the template agreement attached as Exhibit A to the recommended resolution, subject to approval as to legal form by County Counsel; and find that approval of recommended resolution is exempt from California Environmental Quality Act and direct Department of Public Works and Planning to file Notice of Exemption with the Office of the Fresno County Clerk

Sponsors:

Indexes:

Code sections:

Attachments: 1. Agenda Item, 2. Resolution No. 16-372

Date	Ver.	Action By	Action	Result
9/27/2016	1	Board of Supervisors	Consent Agenda be approved	Pass

DATE: September 27, 2016

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Delegation of Authority to Director to Execute Agreements with Cities To Allow Limited Improvements to Property in Process of Annexation to Cities

RECOMMENDED ACTION(S):

1. **Adopt recommended resolution approving and authorizing the Director of the Department of Public Works and Planning, or his or her designee, to approve and execute agreements with requesting cities substantially in the form of the template agreement attached as Exhibit A to the recommended resolution, subject to approval as to legal form by County Counsel.**

2. **Find that approval of the recommended resolution is exempt from the California Environmental Quality Act and direct the Department of Public Works and Planning to file a Notice of Exemption with the Office of the Fresno County Clerk.**

ALTERNATIVE ACTION(S):

The Board may choose not to approve the recommended actions, the result of which would be that agreements of this type would be presented individually to the Board for approval. Presentation of agreements to the Board may result in a delay of construction activities authorized by these agreements.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. The preparation of this agenda item has been absorbed within the Department's existing budgeted appropriations.

DISCUSSION:

Approval by Cities of Development Projects Within Their Spheres of Influence

As a common practice of the development/annexation process, a developer will apply to a city for approval of a development project on land within the city's sphere of influence, but not within the city's corporate boundaries. Upon approval of the land use entitlements by the city, either the city or the developer will initiate the annexation process and seek approval of the Local Agency Formation Commission (LAFCo) for the land to be annexed to the city. However, until LAFCo approves the annexation application, the city cannot authorize construction of the project without the County's approval.

A developer in this situation may nevertheless desire to proceed at his or her own risk. Due to requests received from such developers, the County has had Ordinance Code section 15.04.140 in place for several years which authorizes a city, subject to certain conditions, to permit and inspect the installation of improvements (underground utilities, grading, street improvements and model home construction for residential development and/or underground utilities, grading and street improvements for other than residential development) on land located in the unincorporated territory, but within the city's sphere of influence. In 2007, the Ordinance Code was amended by the Board limiting the type of construction activities that may occur while a property is going through the annexation process, and added the requirement that a city seeking to exercise these provisions execute an agreement agreeing to the provisions of the County's Ordinance Code, including indemnification of the County. Since 2007, no City has sought to implement Section 15.04.140.

Implementation of Ordinance Code section 15.04.140

Representatives of the local building industry and two cities (Clovis and Selma) recently contacted the Department of Public Works and Planning to determine how to initiate construction of development projects to be sited on land in the unincorporated territory, which is in the process of annexation to a city. In response, Department staff identified Section 15.04.140 as a mechanism for the County to authorize limited improvements to be constructed subject to a city's oversight.

An executed agreement substantially in the form of the template agreement would satisfy the requirements Section 15.04.140. Section 15.04.140, allows an owner of property that is located in the unincorporated territory of the County, but which is in the process of being annexed to a city, to construct limited improvements that will be exempt from the requirements of Chapter 15.04 of the County's Ordinance Code, if the County's Building Official finds that the following conditions exist:

1. A city within the County has commenced by the adoption of an appropriate resolution, annexation proceedings of the owner's property upon which the limited improvements are to be constructed;

2. The city's building official has certified that the proposed limited improvements on the property will meet all city ordinances and that said city will enforce the provisions thereof;

3. The city has executed an agreement agreeing to the provisions of this Chapter 15.04 of the Ordinance Code, including indemnification of the county.

Section 15.04.140 requires the property owner to comply with all city ordinances, state and federal regulations relating to the construction of structures and division of land, including the securing of permits as would be required if the property were within the incorporated area of such city.

The Ordinance further provides that if the city issues permits for limited improvements prior to annexation of the property to the city, the city's Building Official shall issue a stop work order for the work authorized by such permits if any of the following occur:

A. The annexation proceedings requested by the City are not consummated within one hundred twenty (120) days. The County's Building Official may grant up to two individual extensions not to exceed thirty days (30) each, and thereafter your Board may grant additional extensions.

B. Annexation of the Property to the city is denied by the Local Agency Formation Commission ("LAFCo").

C. The construction of the improvements does not comply with the city ordinances.

If a stop work order is issued, the city is financially responsible for the expenses necessary to bring the property into compliance with the provisions of the Chapter 15.04 of the Ordinance Code, and any additional construction on the property must comply with the County's Building Code.

Recommended Action No. 1: Resolution Authorizing Director or Designee to Execute Agreement with City

Approval of the recommended resolution would authorize the Director, or his or her designee, to approve and execute an agreement on behalf of the County with a city located within Fresno County, provided that the agreement is substantially in the form of the template agreement attached as Exhibit A to the recommended resolution. Each agreement would be limited to a specific development project, which would be described in the agreement. In addition, copies of certain city records documenting the city's approval of the project, including compliance with applicable law, such as the California Environmental Quality Act (CEQA), would be incorporated into the agreement.

The Department recommends delegating the authority to execute such agreements on behalf of the County to the Director, or his or her designee, to minimize delay to the building industry, while also ensuring that said development satisfies County Ordinance Code Section 15.04.140 and all applicable city ordinances. The recommended resolution would also authorize the Director, or his or her designee, with the prior review and approval by County Counsel as to legal form, to make such additions and changes to the Agreement as the Director, or his or her designee, deems necessary, desirable or appropriate.

Recommended Action No. 2: Adoption of Agreement Is Exempt from the California Environmental Quality Act (CEQA)

Approval of the recommended resolution authorizes the Director, or his or her designee, to approve and execute agreements implementing Ordinance Code section 15.04.140. Approval of the recommended resolution does not relate to a particular development project. Instead, each agreement will related to a specific development project which will have undergone prior environment review by the city which is a party to the agreement. The agreement will require that the city state that it complied with applicable law, including CEQA, in approving the land use application authorizing the development project for which the improvements are required.

Approval of the recommended resolution is a delegation of an administrative function by the Board to the Director, or his or her designee that will not result in direct or indirect changes in the environment. Therefore, approval of the recommended resolution is not a "project" under CEQA. (14 C.C.R. section 15378, subdivision (b)(5).) Moreover, approval of the recommended resolution will not result in a potentially significant impact on

the environment, and therefore approval of the recommended resolution is exempt from the requirements of CEQA. (14 C.C.R. section 15061, subdivision (b)(3).)

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution

CAO ANALYST:

John Hays