Memorandum

City of Tempe

Date: October 2, 2015
To: Mayor and Council
From: Higgins, Elizabeth
Through: Councilmember Kolby Granville
Subject: Development Agreement Language Elements

BACKGROUND:

At the September 3, 2015 Work Study Session, Councilmember Granville introduced a COW Item on the language elements of the city's development agreements. During the discussion, Councilmember Granville stated his desire to formulate stock or standard language on a variety of topics to include in future development agreements. He felt that this it would be helpful to provide pre-direction to staff so that developers are notified early as to what the city's priorities are before they expend a large amount of funding on a project. At the time, there were concerns expressed that the State Legislature could preempt cities and towns from regulating certain activities as a part of the development agreement with a private party.

For your information, I have included the enabling statute on developments agreements.

ARS 9-500.05. Development agreements; public safety; definitions

A. A municipality, by resolution or ordinance, may enter into development agreements relating to property in the municipality and to property located outside the incorporated area of the municipality. If the development agreement relates to property located outside the incorporated area of the municipality, the development agreement does not become operative unless annexation proceedings to annex the property to the municipality are completed within the period of time specified by the development agreement or any extension of such time.

B. A development agreement shall be consistent with the municipality's general plan or specific plan, if any, as defined in section 9-461, applicable to the property on the date the development agreement is executed.

C. A development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the development agreement or by their successors in interest or assigns.

D. No later than ten days after a municipality enters into a development agreement, the municipality shall record a copy of the agreement with the county recorder of the county in which the property subject to the development agreement is located, and the recordation constitutes notice of the development agreement to all persons. The burdens of the development agreement are binding on, and the benefits of the development agreement inure to, the parties to the agreement and to all their successors in interest and assigns.

E. Section 32-2181 does not apply to development agreements under this section.

F. Notwithstanding any other law, a municipality may provide by resolution or ordinance for public safety purposes, and with the written consent of an owner of property that has been granted a development agreement pursuant to this section, an owner of a protected development right pursuant to chapter 11 of this title or the owner of any other residential or commercial development subject to the supervision of a municipality pursuant to this title, for the application and enforcement of speed limits, vehicle weight restrictions or other safety measures on a private road that is located in any development in the municipality and that is open to and used by the public. A municipality may require payment from the property owner of the actual cost of signs for speed limits or other restrictions applicable on the private road, before their installation.

G. Notwithstanding section 19-142, subsection B, a decision by the governing body involving a development agreement may not be enacted as an emergency measure and that decision is not effective for at least thirty days after final approval of the development agreement.

H. In this section, unless the context otherwise requires:

1. "Development agreement" means an agreement between a municipality and a community facilities district pursuant to section 48-709, a landowner or any other person having an interest in real property that may specify or otherwise relate to any of the following:

(a) The duration of the development agreement.

(b) The permitted uses of property subject to the development agreement.

(c) The density and intensity of uses and the maximum height and size of proposed buildings within such property.

(d) Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.

(e) Provisions for preservation and restoration of historic structures.

(f) The phasing or time of construction or development on property subject to the development agreement.

(g) Conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time.

(h) Conditions, terms, restrictions and requirements for annexation of property by the municipality and the phasing or timing of annexation of property by the municipality.

(i) Conditions, terms, restrictions and requirements of deannexation of property from one municipality to another municipality and the phasing or timing of deannexation of property from one municipality to another municipality.

(j) Conditions, terms, restrictions and requirements relating to the governing body's intent to form a special taxing district pursuant to title 48.

(k) Any other matters relating to the development of the property.

2. "Governing body" means the body or board which by law is constituted as the legislative body of the municipality.

3. "Municipality" means an incorporated city or town.