

# CITY OF MORGAN HILL

## CITY COUNCIL POLICIES AND PROCEDURES

CP-12-02

**SUBJECT: PROCESSING AND ACQUISITION OF TRANSFERABLE DEVELOPMENT CREDITS (TDC) POLICY**

**EFFECTIVE DATE: JUNE 20, 2012**

**ORIGINATING DEPARTMENT: COMMUNITY DEVELOPMENT AGENCY**

---

### **Procedures for processing Transferable Development Credits TDC's:**

All TDC applications are to be reviewed and approved by the City Council in accordance with Chapter 18.44, Hillside Combining District. Once approved by the City Council, the following shall occur:

The number of TDC's awarded to the applicant by the City Council should be recorded in the TDC tracking ledger located with and maintained by the Planning Division Staff.

A letter should be sent to the applicant confirming the decision of the City Council. The letter should also outline the procedure for the transfer and sale of the development credits as Exhibit A. Enclosed with the letter should be the Open Space Agreement Deed for Open Space Easement, attached as Exhibit B with instructions to return it once all properties owners and lien holders of record have signed. Each of the signatures must be notarized.

Upon receipt of the signed Open Space Easement agreement, the Planning Division Staff shall forward the signed agreement to the City Clerk's Office for signature of the Clerk and City Manager. The City Clerk's office will then send the signed agreement for recordation with the County Records Office. The recorded agreement will be returned to and retained by the Clerk's office. A copy of the recorded agreement should be given to the Planning Division Staff.

Once the recorded open space agreement is returned, then the appropriate number of TDC certificates, Exhibit C should be produced. The original TDC certificates should bear the City seal and should be retained by the City Clerk for storage in the vault. Original certificates are not to be given to the owner. The owner of the certificates can receive copies of the certificates.

**Important: TDC's awarded by the City Council cannot be sold or transferred until an open space easement has been recorded on the property.**

### **Procedure for the sale or transfer of TDC's:**

The transfer from one party to another must be registered by the Planning Division Staff. The transfer of a TDC(s) requires that both the buyer and seller be present before the Planning Division Staff who will witness and record the transaction.

If the TDC transaction involves only the transfer of a TDC(s) certificate from one party to another and not be fulfillment of a RDCS commitment, the name of ownership on the original TDC(s) shall be changed accordingly. The certificate bearing the original owner's name shall be destroyed and a replacement certificate(s) bearing the new owner's name shall be stored in the vault. The new owner's name and number of TDC(s) held by the new owner shall be added to the TDC tracking ledger located with and maintained by the Planning Division Staff.

If the transfer is to a party who needs the TDC(s) to fulfill a commitment made under the RDCS, the owner of the TDC(s) will need to endorse the certificate(s); the party purchasing the TDC(s) will need to endorse the certificate(s) and indicate on the certificate(s) to which property/project the TDC(s) will apply. The TDC certificate(s) should then be marked "Cancelled" and initialed by the Planning Division Staff and returned to the vault for storage. The party purchasing the TDC(s) to fulfill a RDCS project commitment shall be issued a copy of the cancelled certificate as a receipt.

### **Acquisition by City of TDC's:**

In 2001, the City created a TDC in-lieu fee, allowing projects pledging acquisition of TDC's, to incrementally pay an in-lieu fee for that pledge, collected at the final of the building permit. From time to time, the City may consider acquiring TDC's from holders that have been unable to sell them in the open market. The City Council will consider such requests from TDC holders, on a case by case basis, for a cost not to exceed 90% of the in-lieu fee effective at the time of the acquisition. Acquisition decisions shall be made case by case because:

1. The City Council creates TDC's and is aware of Open Space preservation efforts via the TDC
2. The City Council can assess the competition for use of Open Space Funds prior to making the decision to acquire the TDC
3. The City Council can track the history of the Open Space fund, assess collections, account for deviations to collections that are dependent upon RDCS competition

**APPROVED:**



\_\_\_\_\_  
**STEVE TATE, MAYOR**