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CHAPTER 6AA
DEVELOPMENT AGREEMENTS
(Ord No 340-AC)

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Sec. 6AA-1. Purpose

The purpose of this chapter is to establish procedures and requirements for the consideration of development agreements, as authorized by Government Code section 65865(c). (Ord. No. 340-AC)

Sec. 6AA-2. Applications and fees

(a) Applications

(1) Eligibility. Only those persons having a legal or equitable interest in real property, and their authorized representatives, are eligible to submit applications requesting the consideration of a development agreement. The community development department shall require applicants to submit proof of their interest in the subject real property and of the authority of their agent to act for them. Before processing an application, the department shall obtain the opinion of the city attorney as to the sufficiency of the applicant's interest in the subject real property.

(2) Form and Filing Procedure. The process for consideration of a development agreement shall begin upon the filing of an application by or on behalf of a person eligible to apply under section 23-2(a)(1). The community development department shall provide application forms, and such other forms as may be required. Each application submitted for filing shall be accompanied by a proposed development agreement conforming to the requirements established by this chapter and by state law. An application shall contain all of the following:

- (A) Sufficient information to enable the city to perform an initial study pursuant to Public Resources and code section 21160;
- (B) Sufficient information to establish that the project is consistent with the General Plan;
- (C) Such other information and supporting data as the community development department considers necessary to process the application.

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- (b) Fees. The city council shall establish by minute order or by resolution a reasonable fee for processing a development agreement application. An applicant shall pay the fee at the time of filing. (Ord. No. 340-AC)

Sec. 6AA-3. Contents. A development agreement shall specify or contain all of the following:

- (a) Duration of the agreement;
- (b) Permitted uses of the property;
- (c) Density or intensity of use;
- (d) Maximum height and size of proposed buildings;
- (e) Provisions for reservation or dedication of land for public purposes;
- (f) A general site plan showing arrangement of uses, circulation, and required dedication;
- (g) A timetable for the completion of various project phases or other features of the agreement;
- (h) Conditions, terms, restrictions, and requirements for subsequent discretionary actions;
- (i) Such other provisions as may be considered necessary or proper by the city council to further legitimate city interest or to protect the public health, safety, and welfare. (Ord. No. 340-AC, § 1.)

Sec. 6AA-4. Public hearing

The planning commission and the city council shall conduct public hearings to consider applications for development agreements.

(a) Notice. Notice of public hearings shall be given in the manner prescribed by Government Code section 65867. If state law prescribes a different form of notice, then notice shall be given in that manner. Failure of any person to receive notice shall not affect the authority of the city to enter into a development agreement.

(b) Irregularities. No action, inaction, or recommendation regarding the proposed development agreement shall be held invalid or be set aside by a court because of any procedural error in conducting the public hearing, unless after an examination of the entire case, the court is of the opinion that the error complained of was prejudicial, that the complaining party suffered substantial injury, and that a different result would have been probable if the error had not occurred. (Ord. No. 340-AC)

Sec. 6AA-5. Action on an application

(a) Recommendation by the planning commission. After conducting a public hearing to consider a proposed development agreement, the planning commission shall make a recommendation in writing to the city council. In making its determination, the planning commission shall consider the following aspects of the proposed agreement:

- (1) Consistency with the objectives, policies, general land uses, and program specified in the general plan and any applicable specific plan;
- (2) Compatibility with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- (3) Conformity with public convenience, general welfare, and good land use practice;

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- (4) Detrimental impact, if any, on the health, safety, and general welfare; and
- (5) Effect on the orderly development of property and the preservation of property values.

(b) Decision by the city council.

(1) Approval, Modification, or Disapproval. After the city council conducts a public hearing regarding a proposed development agreement, it may accept, modify, or disapprove the recommendation of the planning commission. The city council may not approve a proposed development agreement unless it finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan. If the city council wishes to approve a proposed development agreement, it shall do so by adoption of an ordinance. After the ordinance approving the development agreement takes effect, the city council may enter into the agreement.

(2) Referral Back to the Planning Commission. In its discretion, the city council may refer to the planning commission for a report and recommendation matters not previously considered by the commission during its hearing. The planning commission may, but need not, hold a public hearing on such matters referred back to it. (Ord. No. 340-AC)

Sec. 6AA-6. Amendment and cancellation. A development agreement may be amended or canceled by mutual consent of the parties or their successors in interest. Notice of the intention to amend or cancel any portion of the agreement shall be given in the manner provided by Government Code section 65867. Either party may propose an amendment to, or cancellation in whole or in part of, a development agreement previously entered into provisions of the agreement shall be modified or suspended as necessary to comply with state or federal laws or regulations, in accordance with Government Code section 65869.5. (Ord. No. 340-AC)

Sec. 6AA-7. Recordation. Within ten days after the city enters into a development agreement, the city clerk shall have the agreement recorded with the county recorder. If the parties to the agreement or their successors in interest amend or cancel the agreement, or if the city terminates or modifies the agreement as provided by Government Code section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the city clerk shall have notice of such action recorded with the county recorder. (Ord. No. 340-AC)

Sec. 6AA-8. Periodic review.

(a) Time for Review. The planning commission shall review a development agreement every twelve months or more frequently if the agreement so provides. Additionally, an agreement shall be reviewed if any of the following conditions are met:

- (1) Recommendation of the planning staff;
- (2) Affirmative vote of at least three members of the planning commission;
- (3) Affirmative vote of at least three members of the city council.

(b) Notice. The community development department shall notify the property owner of the city's intent to review the development agreement. Such proceedings shall be public

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hearings and notice shall be provided in the manner prescribed by Government Code section 65867.

(c) Burden of Proof. At review proceedings, the property developer or its successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue shall be on the property developer or successor in interest. (Ord. No. 340-AC)

Sec. 6AA-9. Modification or termination

(a) Recommendation by the planning commission. If as a result of its review of a development agreement pursuant to section 6AA-8, the planning commission finds based on substantial evidence that the property developer has not complied in good faith with the terms or conditions of the agreement, it shall recommend to the city council that the agreement be modified or terminated. If the city council concurs with the planning commission's recommendation, then the council shall give the property developer notice of its intent to modify or terminate the agreement, and of the time and place that the council will conduct a hearing on the matter.

(b) Hearing by the city council. At the hearing on modification or termination of a development agreement, the property developer shall be given an opportunity to be heard. The city council may then affirm, modify, or reject the recommendation of the planning commission. The council may also refer the matter back to the planning commission for further proceedings or for report and recommendation. The council may impose conditions on the actions it takes, as the council deems necessary to protect the interests of the city. The decision of the council is final. (Ord. No. 340-AC, § 1.)

Sec. 6AA-10. Issuance of building permits. Building permits shall not be issued for any project approved pursuant to the development agreement process if, at the time for issuance, the development agreement has been terminated. Furthermore, if there is a hearing pending to determine the existence of default by the property developer or any obligor under the terms of the development agreement, then no building permit may be issued at that time without written approval of the city manager. (Ord. No. 340-AC, § 1.)

Sec. 6AA-11. Rules, regulations, and official policies. The rules, regulations, and official policies governing permitted uses of land, density, design, improvement and construction shall apply to development agreements in the manner prescribed by Government Code section 65866. To the extent permitted by Government Code section 65865.4, a development agreement is enforceable by any party to the agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city which alters or amends the rules, regulations, or policies described above. (Ord. No. 340-AC)

Sec. 6AA-12. Reversion of zoning in the event of noncompliance. If the terms and conditions of a development agreement are not complied with by the property developer, the zoning applicable to the subject property shall revert to the zoning that existed prior to the time the development agreement was entered into. (Ord. No. 340-AC)