

**Article 44 Development Agreements (City-wide)**

**Sections:**

- 4401 Purpose
- 4402 Application Requirements
- 4403 Pre-Application Process
- 4404 Department Review and Recommendation
- 4405 Public Hearing Required
- 4406 Planning Commission Action
- 4407 City Council Action
- 4408 Annual Review
- 4409 Application of Existing Rules, Regulations, and Policies
- 4410 Modification and Termination
- 4411 Administration

**4401 Purpose**

In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development, the Legislature of the State of California adopted Section 65864 et. seq. of the Government Code, authorizing local governments to enter into development agreements with applicants for development projects. The objective of such an agreement is to provide assurances that, upon approval of the project, the applicant may proceed with the project in accord with existing policies, rules and regulations, subject to the conditions of approval, thus vesting certain development rights in the property. The purpose of this article is to establish procedures and requirements for consideration of development agreements by the City consistent with state law.

**4402 Application Requirements**

An applicant may propose that the City consider entering into a development agreement pursuant to Title 7, Chapter 4, Article 2.5 of the Government Code, commencing with Section 65864, by filing an application with the Planning Division. The application shall be accompanied by the following:

- A. A proposed agreement, which shall contain the following:
  - 1. A legal description of the property sought to be covered by the agreement;
  - 2. A statement of concurrence in the application by the owner if the applicant is not the fee owner;
  - 3. A description of the proposed uses, height and size of building(s), density or intensity of use, and provision for reservation or dedication of land for public purposes;

4. A statement of terms and conditions relating to applicant financing of public facilities and required improvements;
  5. All proposed conditions, terms, restrictions, requirements for subsequent City discretionary actions;
  6. A statement specifying which rights are intended to vest on the effective date of the agreement, and the timing and sequence of subsequent discretionary approvals and vesting of rights;
  7. The proposed time when construction would be commenced and completed for the entire project and any proposed phases; and
  8. The termination date for the agreement.
- B. A completed Initial Study form.
- C. A map showing the location and street address of the property that is the subject of the amendment and of all lots of record within 300 feet of the boundaries of the property.
- D. A list, drawn from the last equalized property tax assessment roll, showing the names and addresses of the owner of record of each lot within 300 feet of the boundaries of the property. (This list shall be keyed to the map required by subsection [C] above.);
- E. A statement documenting that the project is consistent with the General Plan and all applicable specific plans.
- F. Such other information as the City Planner may require by policy or to satisfy other requirements of law.
- G. The required fee.

#### **4403 Pre-Application Process**

City staff shall not begin to negotiate with the applicant until the City Council has so authorized staff, following completion of the pre-application process as set forth below.

- A. The Planning Division shall review the proposal, consult with all City departments, obtain such additional information from the applicant as may be deemed necessary by the City Manager, and shall, within 45 days of receipt of the proposal, prepare a report containing the Division's recommendation to the City Council. The recommendation shall consist of the following:
1. A statement of potential public benefits accruing to the City if the agreement were entered into, as identified by the City Planner;

2. A recommendation whether the City should negotiate further with the applicant, with supporting arguments;
  3. A statement of issues for further research and investigation, and issues which should be addressed in the development agreement;
  4. A statement of those documents, applications and other items required by the City Planner in order to further process the application or negotiate with the applicant.
- B. Upon receipt of the recommendation of the City Planner, the report shall be set for a public hearing before the City Council at its next regularly scheduled meeting. The City Council shall consider at the hearing whether to authorize City staff to negotiate with the applicant concerning the development agreement. Notice of the hearing shall be given in accordance with Section 65090 and 65091 of the Government Code.
- C. Upon the close of the hearing, the City Council shall either:
1. Direct City staff, by written resolution, to begin negotiating with the applicant, and to prepare a proposed development agreement for Planning Commission review; or
  2. Determine that no further negotiations are desirable and so state in a written resolution, including the reasons for such a determination, and reject the application.

#### **4404 Department Review and Recommendation**

The Planning Division shall, at the applicant's expense and in accord with City procedures for implementation of CEQA, undertake environmental review and, upon completion of such review, transmit the application, together with the recommendations thereon, to the Planning Commission.

#### **4405 Public Hearing Required**

Upon receipt of an application, the results of the environmental review, and the recommendations of the staff, the Planning Commission shall schedule a public hearing. The Planning Commission hearing shall be scheduled for six months following City Council authorization to staff to negotiate with the applicant, unless the City and the applicant mutually agree to a later date.

Notice of intention to consider the application shall be given as provided in Sections 65090 and 65091 of the Government Code. In addition, if the application is being processed together with the development project, notice of such intention shall be given as required for consideration of the development project.

**4406 Planning Commission Action**

After the public hearing is closed, the Planning Commission shall recommend approval, modification, or disapproval of the proposed development agreement. The Commission shall transmit its recommendation to the City Council within 30 days.

**4407 City Council Action**

- A. Upon receipt of the application, the results of the environmental review, and the recommendations of the staff and the Planning Commission, the City Council shall schedule a public hearing on the application. Notice of intention to consider the application shall be given in the same manner as set forth in Section 4405 above.
- B. If the application is being processed together with the development project, the public hearing on the application may be held concurrently with the hearing on the project.
- C. After the public hearing is closed, the City Council shall approve, modify, or disapprove the proposed development agreement. An agreement shall not be approved unless the City Council makes the following findings:
  - 1. That the agreement is consistent with the General Plan and with any Specific Plan;
  - 2. That the agreement is consistent with all provisions of this ordinance, the City Code, and the State Subdivision Map Act;
  - 3. That the agreement will not be detrimental to the health, safety and general welfare; and will not adversely affect the orderly development of property or the preservation of property values;
  - 4. That the City Council has considered the effect of the development agreement on the housing needs of the region in which the City is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.
  - 5. For properties located within the coastal zone: That the agreement is consistent with all applicable policies of the certified Land Use Plan.

Any approval of a proposed agreement shall be made by ordinance, which shall authorize the Mayor and the City Clerk to sign the agreement on behalf of the City, and shall become effective after thirty days following the second reading, unless a referendum is filed within that time.

- D. No agreement shall be signed by the Mayor and the City Clerk until it has been duly signed by the applicant and owner, if the applicant is not the owner. If the applicant has not signed and returned the approved agreement to the Mayor and the City Clerk for signing within 30 days of Council approval, said application shall be deemed withdrawn

by applicant.

- E. Within 10 days after the Mayor and the City Clerk sign a development agreement and the ordinance becomes effective, the City Clerk shall cause a copy thereof to be recorded.
- F. All agreement provisions are subject to modification or suspension as set forth in Title 7, Chapter 4, Article 2.5, of the Government Code, commencing with Section 65864.

**4408 Annual Review**

- A. Development agreements shall be limited in their term to a period not to exceed a maximum of 10 years from the effective date of the adopting ordinance. The City may specify in the agreement options to renew the term of the agreement.
- B. All development agreements shall be reviewed by the City Planner at least once every 12 months, unless the agreement provides for more frequent review, in which case the agreement shall prevail.
- C. The purpose of the review shall be to inquire into the good faith compliance of the applicant with the terms and conditions of the agreement and for any other purpose specified in the agreement.
- D. The City Planner shall begin the annual review proceeding by giving written notice to the applicant or any of its successors in interest (hereinafter collectively referred to as the "applicant") that the City intends to undertake a periodic review of the development agreement. He shall give the written notice at least 30 days and not more than 60 days prior to the first anniversary of the effective date of the development agreement and each anniversary thereafter. The notice shall specify that the applicant must submit documentation to demonstrate the applicant's good faith compliance with the development agreement. In addition to the information provided by the applicant set forth below, the City Planner may request that the applicant address additional issues with respect to the applicant's good faith compliance with the terms of the development agreement. The City Planner shall deliver no less than 30 days' written notice of any hearing of any requirement that the City desires to be addressed, and applicable staff reports, in a manner sufficient for the applicant to respond. Either party may address any requirement of the development agreement during the review period. If, at any time of review, an issue not previously identified in writing is required to be addressed by the City, the review at the request of either party may be continued to afford sufficient time for analysis and preparation.
- E. During the review period, the applicant shall have the duty to demonstrate its good faith compliance with the terms of the development agreement. The burden of proof of good faith compliance shall be on the applicant. The applicant's duty to demonstrate may be satisfied, by presentation to the City of: (1) a written report identifying the applicant's performance or the reasons for its non-performance or excused performance pursuant to

any applicable provisions of the development agreement; or (2) oral or written evidence submitted at the time of review.

- F. The City Planner shall determine, on the basis of substantial evidence, whether or not the Applicant has complied in good faith with the terms and conditions of the development agreement, and shall deliver written notice of his or her determination to the applicant. If the City Planner finds and determines on the basis of substantial evidence that the applicant has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded and no other action shall be necessary.

If the City Planner finds and determines on the basis of substantial evidence that the applicant has not complied in good faith with the terms and conditions of the agreement during the period under review, the notice of such determination shall specify the manner in which the applicant has failed to comply. The applicant may appeal this determination to the City Council by filing a written notice of appeal with the City Clerk within 10 working days after the date the notice of determination of noncompliance is issued. If the applicant fails to appeal the determination within this time period, the City Planner determination shall become conclusive and final. The City Planner shall thereafter take such further action as may be deemed necessary based on the requirements of the development agreement including, but not limited to establishment of a cure period, project modification, or referral to City Council for modification or termination of the agreement.

- G. Upon appeal by the applicant or upon the referral of the determination by the City Planner to the City Council, the City Council shall conduct a public hearing at which the applicant must demonstrate good faith compliance with the terms of the agreement. The burden of proof on this issue is upon the applicant. Prior to the City Council's determination, the City Council may refer the matter to the Planning Commission for their review and recommendation to the City Council. The City Council shall, in its referral, specify when the Planning Commission should issue its report and recommendation to the City Council.
- H. The City Council shall determine upon the basis of substantial evidence whether or not the applicant has, for the period under review, complied in good faith with the terms and conditions of the agreement. The City Council shall issue written findings to support its determination.
1. If the City Council finds and determines on the basis of substantial evidence that the applicant has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded and no other action shall be necessary.
  2. If the City Council finds and determines on the basis of substantial evidence that the applicant has not complied in good faith with the terms and conditions of the agreement during the period under review, the City may declare the applicant to be

in default, may initiate proceedings to unilaterally modify or terminate the agreement in accordance with Section 4410, set a reasonable time for compliance under the agreement, or take such further action as the City deems necessary and appropriate under the circumstances.

**4409 Application of Existing Rules, Regulations and Policies**

Unless otherwise provided by the development agreement, rules, regulations, and official policies applicable to development of the property subject to a development agreement, shall be those rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement shall not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property as set forth herein, nor shall a development agreement prevent the City from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies. No rights shall be deemed to vest in the applicant, or any other person, under any development agreement, except as expressly set forth in the development agreement.

**4410 Modification and Termination**

Any development agreement may be amended, or canceled in whole or in part, by mutual consent of the applicant (or its successor in interest) and the City, or it may be modified or terminated pursuant to the provisions of Section 4408, above. Notice of intention to take any such action shall be given in the manner provided by Section 4405, above; provided, however, that the parties may set forth an alternative procedure in the agreement for processing insubstantial amendments. Any significant amendment shall be subject to the provisions of the Government Code, Section 65867.5.

**4411 Administration**

The City Planner shall prepare and adopt such application forms, checklists, and other documents as considered necessary and desirable to implement these procedures and requirements.