

## CHAPTER 19.40 DEVELOPMENT AGREEMENTS

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### 19.40.010 PURPOSE

1. The following provisions are intended to establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of property owners or other persons having a legal or equitable interest in the property proposed to be subject to the agreement. It is intended that the provisions of this Chapter shall be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.
  
2. In construing the provisions of any development agreement entered into pursuant to this Chapter, those provisions shall be read to fully effectuate, and to be consistent with, the language of this Chapter, Article 2.5 of the California Government Code, cited above, and the agreement itself. Should any apparent discrepancies between the meaning of these documents arise, then the documents shall control in construing the development agreement in the following order of priority:
  - A. The plain terms of the development agreement itself;
  - B. The provisions of this Chapter; and
  - C. The provisions of Article 2.5 of the California Government Code, cited above.

### 19.40.020 APPLICATION

1. Any owner of real property or other person having a legal or equitable interest in the property may request and apply through the Director to enter into a development agreement provided that:
  - A. The property proposed to be subject to the agreement shall be not less than one acre in size;

- B.** The application is made on forms approved, and contains all information required, by the Director;
  - C.** The status of the applicant as an owner of, or holder of legal or equitable interest in, the property is established to the satisfaction of the Director; and
  - D.** The application is accompanied by the fee established pursuant to Chapter 19.32 (Applications and Fees) and all other lawfully required documents, materials and information.
- 2.** The Director is hereby empowered to receive, review, process and prepare, together with recommendations, for Commission and Council consideration, as applicable, all applications for development agreements. The Director may call upon all other departments of the City for timely assistance in complying with this Chapter.
  - 3.** Processing fees, as established by resolution of the Council, shall be charged for any application for a development agreement made pursuant to the provisions of this Chapter, and shall also be so established and charged for periodic reviews conducted pursuant to Section 19.32.

#### **19.40.030 PUBLIC HEARINGS**

- 1.** The Director, upon finding the application for a development agreement complete, shall set the application, together with recommendations, for public hearing before the Commission pursuant to Chapter 19.52 (Hearings and Appeals). Following conclusion of the public hearing by the Commission, the Commission shall recommend to the Council that it approve, conditionally approve, or disapprove the application.
- 2.** Upon receipt of the Commission's recommendation, the City Clerk shall set the application and written report of the Commission for public hearing before the Council. Following conclusion of the public hearing by the Council, the Council shall approve, conditionally approve or deny the application.
- 3.** Notice of the hearings set forth in Subsections 1 and 2 above, shall be given in the form of a notice of intention to consider adoption of a development agreement as required by Government Code Section 65867.
- 4.** Should the Council approve or conditionally approve the application, it shall, as a part of its action of approval, direct the City Attorney to prepare a development agreement embodying the terms and conditions of the application as approved or conditionally approved by it, as well as a resolution authorizing execution of development agreement by the City Administrator.
- 5.** The resolution shall set forth findings, and the facts supporting them, that the development agreement is consistent with the General Plan and any applicable Specific Plans, this Development Code, and that it will promote the welfare and public interest of the City.
- 6.** The resolution may be subjected to referendum in the manner provided by law.

**19.40.040 CONTENT OF DEVELOPMENT AGREEMENT**

**1. MANDATORY CONTENTS**

A development agreement entered into pursuant to this Chapter must contain provisions that:

- A. Specify the duration of the agreement;
- B. Specify the permitted uses of the property;
- C. Specify the density or intensity of use(s);
- D. Set forth the maximum height and size of proposed structures;
- E. Set forth provisions, if any, for reservation or dedication of land for public purposes;
- F. Provisions not permitting protection from a future increase in development fees;
- G. Provisions for a tiered amendment review procedure such as:
  - 1) Director sign-off for small changes;
  - 2) Commission sign-off for large changes; and
  - 3) Major amendments by Council; and
- H. Provisions for a health and safety exception such as a "compelling public necessity" (i.e., a new environmental health hazard is discovered).

**2. PERMISSIVE CONTENTS**

A development agreement entered into pursuant to this Chapter may:

- A. Include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;
- B. Provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time;
- C. Include terms and conditions relating to applicant financing of necessary public improvements and facilities, including, but not limited to, applicant participation in benefit assessment proceedings; and
- D. Include such other terms, conditions and requirements as the Council may deem necessary and proper, including, but not limited to, a requirement for assuring to the satisfaction of the City performance of all provisions of the agreement in a timely fashion by the applicant/contracting party.

**19.40.050 EXECUTION AND RECORDATION**

1. The City shall not execute any development agreement until on or after the date upon which the resolution approving the agreement and enacted pursuant to Section 19.40.030 becomes effective.
2. An executed development agreement shall be recorded in the office of the County Recorder no later than 10 days after it is entered into.

**19.40.060 ENVIRONMENTAL REVIEW**

The approval or conditional approval of a development agreement, pursuant to this Chapter shall be deemed a discretionary act for purposes of the California Environmental Quality Act (CEQA).

**19.40.070 PERIODIC REVIEW**

1. Every development agreement approved and executed pursuant to this Chapter shall be periodically reviewed during the term of the agreement every year following the date of its execution.
2. The purpose of the reviews conducted pursuant to this Section shall be to determine whether the applicant/ contracting party or its successor-in-interest has complied in good faith with the terms of the development agreement. The burden shall be on the applicant/contracting party or its successor to demonstrate such compliance to the full satisfaction of, and in a manner as prescribed by the City.
3. If, as a result of periodic review pursuant to this Section, the Council finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor-in-interest has not complied in good faith with terms or conditions of the agreement, the Council may order, after hearing, that the agreement be terminated or modified.

**19.40.080 EFFECT OF DEVELOPMENT AGREEMENT**

Unless otherwise provided by the development agreement, the rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement and construction standards and specifications, applicable to development of the property subject to a development agreement, are the rules, regulations, and official policies in force at the time of execution of the agreement. A development agreement does 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 under the development agreement, nor does 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.

**19.40.090 APPROVED DEVELOPMENT AGREEMENTS**

Pursuant to this Chapter, development agreements approved by the Council are on file with the office of the City Clerk.