

CHAPTER 5. DEVELOPMENT AGREEMENTS

Section 9-5.101. Purpose and Scope.

The provisions of this Chapter regulate the processing, review and approval of development agreements as authorized by Government Code Sections 65854 et seq.

Section 9-5.102. Application.

- (a) A property owner who desires to enter into a development agreement shall make application on forms provided by the Planning Director.
- (b) The Planning Director shall present a report and recommendation on the application to the Planning Commission for review at a duly noticed public hearing as set forth below.

Section 9-5.103. Notices.

- (a) The Planning Secretary shall give notice of intention to consider adoption of the development agreement prior to consideration of the proposed agreement by the Commission.
- (b) The notice shall contain:
 - (1) The time and place of the hearing;
 - (2) A general explanation of the matter to be considered including a general description of the area affected; and
 - (3) Other information required by specific provision of these regulations or which the Secretary considers necessary or desirable.
- (c) The notice shall be given by:
 - (1) Publication at least once in a newspaper of general circulation, published and circulated in the City.
 - (2) Mailing to persons shown on the last equalized assessment roll as owning real property within three hundred feet of the property which is the subject of the proposed development agreement. If the number of owners to whom notice is to be mailed is greater than 1,000, the Planning Secretary may provide notice in the manner set forth in Government Code section 65854.5(b).

Section 9-5.104. Hearing.

- (a) The public hearing shall be conducted by the Commission in accordance with the procedural standards for the conduct of zoning hearings. Each person interested in the matter shall be given an opportunity to be heard. The applicant has the burden of proof at the public hearing on the proposed development agreement.
- (b) No action, inaction or recommendation regarding the proposed development agreement shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless after an examination of the entire case, including the evidence, the court is of the opinion that error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury, and that a different

result would have been probable if the error had not occurred or existed. There is not presumption that error is prejudicial or injury was done if error is shown.

Section 9-5.105. Contents of Agreement.

A development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may 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. The agreement may provide construction shall be commenced within a specified time and the project or phase be completed within a specified time.

Section 9-5.106. Other Regulations.

Unless otherwise provided by the development agreement, 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, 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.

Section 9-5.107. Commission.

At the conclusion of the hearing, the Commission shall make its recommendation in writing to the City Council. The recommendation shall include the Commission's determination whether or not the development agreement proposed is:

- (a) Consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- (b) Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- (c) In conformity with public convenience, general welfare and good land use practice;
- (d) Detrimental to the health, safety and general welfare; and
- (e) Adversely affecting the orderly development of property or the preservation of property values.

Section 9-5.108. Council.

- (a) The Council shall conduct a duly noticed public hearing to consider the Commission's recommendations. The hearing shall be called and conducted in the same manner as the Commission hearing is called and conducted.
- (b) After the hearing, the Council may accept, modify or disapprove the recommendation of the Planning Commission. The Council may, but need not, refer matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission may, but need not, hold a public hearing on matters referred back to it by the Council.
- (c) The Council may not approve the development agreement unless it finds the agreement is consistent with the general plan and applicable specific plans.
- (d) The Council shall approve the development agreement, if at all, by ordinance. The City may enter into the agreement after the ordinance is effective.

Section 9-5.109. Recordation.

- (a) Within ten days after the City enters into the development agreement, the City Clerk shall have the agreement recorded.
- (b) If the agreement is amended or terminated, the City Clerk shall have notice of such action recorded.

Section 9-5.110. Periodic Review.

- (a) The Commission shall conduct a hearing to review the development agreement at least every twelve months from the date of the agreement. The time for review may be modified either by agreement between the parties in one or more of the following ways:
 - (1) Recommendation of the planning staff;
 - (2) Affirmative vote of at least three members of the Planning Commission;
 - and
 - (3) Affirmative vote of at least three members of the Council.
- (b) The City Clerk shall begin the review proceeding by giving notice to the property owner the City intends to undertake a periodic review of the development agreement at least thirty days in advance of the hearing.
- (c) At the public hearing, the property owner must demonstrate good faith compliance with the terms of the agreement. The Commission shall determine upon the basis of substantial evidence whether or not the property owner has, for the period under review, complied in good faith with the terms and conditions of the agreement.
- (d) If the City finds and determines on the basis of substantial evidence the property owner 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. If the City finds and determines on the basis of substantial evidence the property owner has not complied in good faith with the terms and conditions of the agreement during

the period under review, the City may modify or terminate the agreement.

- (e) The property owner may appeal a determination pursuant to this section to the Council.