

Chapter 246 Development Agreements

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246.02 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 standards, subject to the conditions of approval, thus vesting certain development rights in the property. The purpose of this chapter is to establish procedures and requirements for consideration of development agreements by the City consistent with state law.

246.04 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. 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.

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, and 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. Such other information as the Director may require by policy or to satisfy other requirements of law.
- C. The required fee.

246.06 Department Review and Recommendations

Unless the project is categorically exempt, the Department shall, at the applicant's expense and in accord with City procedures for implementations of CEQA, undertake environmental review of an application judged complete by the Director. Upon completion of such review, the development agreement shall be transmitted together with the Department's recommendations to the Planning Commission 30 days prior to the public hearing by the Planning Commission.

246.08 Public Hearing Required

Upon receipt of a complete application, the results of the environmental review, and the recommendations of the Department, the Planning Commission shall schedule a public hearing to determine whether the proposal conforms to the General Plan and, if the site of the development agreement is located within the coastal zone, to the Local Coastal Program. The Planning Commission hearing shall be scheduled within six (6) months following receipt of a complete application, 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. If the development project is located within the coastal zone, a coastal development permit is required. If the site of the development agreement is in the coastal zone and the proposed development is inconsistent with the certified Local Coastal Program, the development agreement shall not become effective unless and until a Local Coastal Program amendment is approved and effectively certified by the Coastal Commission.

(3334)

246.10 Planning Commission Action

After the public hearing is closed, the Commission shall determine whether the agreement is consistent with the General Plan, and if the site of the development agreement is located

within the coastal zone, the Local Coastal Program, and, on the basis of such findings, shall recommend either approval, modification, or disapproval of the proposed development agreement. The Commission shall transmit its recommendation and the development agreement to the City Council within 30 days and 30 days prior to the public hearing by the City Council. (3334)

246.12 City Council Action

- A. Upon receipt of the application, the results of the environmental review, and the recommendations of the Department 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 246.08.
- 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. After considering the Planning Commissions' review that the agreement is consistent with the General Plan and with any Specific Plan, and if the site of the development agreement is located within the coastal zone, with the Local Coastal Program;
 - 2. That the agreement is consistent with all provisions of this ordinance, the Municipal 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;
 - 4. That the City Council has considered the fiscal effect of the development agreement on the City and the effects 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.

Any approval of a proposed agreement shall authorize the Mayor and the City Administrator to sign the agreement on behalf of the City, and shall become effective after 30 days following the second reading, unless a referendum is filed within that time. (3334)

246.14 Annual Review

- A. All development agreements shall be reviewed by the Director at least once every 12 months, unless the agreement provides for more frequent review, in which case the agreement shall prevail.

- B. 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.
- C. Prior to each review, the Department shall prepare a report relative to all development that has occurred under the agreement subsequent to the last past review and any other matters the Department wishes to bring to the Director's attention.
- D. If the Department review determines that all terms and conditions of the agreement have been met, and the Director concurs in writing, no further review shall be required.
- E. If the Department report recommends modification or termination of the agreement, or if the Director proposes to make such a recommendation to the City Council, he shall schedule a public hearing before the Planning Commission on the agreement if such modifications are major or involve land use changes. Notice of intention to modify or terminate the agreement shall be given in the same manner as set forth in Section 246.08. At such hearing the applicant shall have the burden of demonstrating his good faith compliance with the terms and conditions of the agreement. After closing the public hearing, the Planning Commission shall determine whether to recommend that the agreement be terminated or modified.
- F. Upon receipt of the Director's or Planning Commission's recommendation, the City Council shall schedule a public hearing. Notice of intention to modify or terminate the agreement shall be given in the same manner as set forth in Section 246.08. If, after the public hearing is closed, the City Council finds and determines on the basis of substantial evidence that the applicant or its successor in interest has not complied in good faith with the terms and conditions of the agreement, the City Council may modify or terminate the agreement. Any modification or termination is subject to the provisions of Section 246.18, below.

246.16 Application of Existing Rules, Standards and Policies

Unless otherwise provided by the development agreement, rules, standards, and official policies applicable to development of the property subject to a development agreement, shall be those rules, standards, 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, standards, and policies which do not conflict with those rules, standards, 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, standards, 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.

246.18 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 246.14, above. Notice of intention to take any such action shall be given in the manner provided by Section 246.08; 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. Any development agreement which is amended or modified shall be subject to those rules, standards, and official policies in force at the time of the execution of the agreement.