



STAFF REPORT

Meeting Date: August 16, 2016
To: Honorable Mayor & City Council
From: Kevin Kearney, Senior Management Analyst
Subject: Request by Vice Mayor Krasne to Discuss the Process of
Negotiating Development Agreements

Attachments:

1. City of Santa Monica, Municipal Code
2. City of Culver City, Municipal Code
3. City of West Hollywood, Municipal Code
4. California Government Code Provisions related to
Development Agreements (Sections 65864, et seq.)

INTRODUCTION

This report reviews the City of Beverly Hills' development agreement negotiation process and provides information on the processes of other cities. While the City does not have a formal adopted policy regarding development agreement negotiations; historically, negotiations have been lead by a 2-Councilmember Ad Hoc Committee and senior Staff members.

From a survey of 5 surrounding cities, Staff was able to speak with 2 of the planning departments and located 3 different cities' municipal codes dealing with the development agreement process. Overall, Staff did not identify a consistent approach that cities use in negotiating the community benefit aspect of the development agreement.

DISCUSSION

Development agreements are contracts negotiated between project developers and public agencies that typically vest the developer's rights to develop in accordance with project approvals and existing laws, in exchange for community benefits provided to the public agency. California Government Code Sections 65864 *et seq.* authorize development agreements, set minimum standards for what must be included in such agreements, and provide general procedural requirements for consideration and approval of development agreements. The statutes do not, however, provide guidance regarding the mechanics of negotiating development agreement terms. Further, as a general matter, the Brown Act does not contain provisions that would allow the city councils to meet in closed session for the purposes of negotiating the terms of a development agreement.

Neither the project developer nor the public agency is required to enter into a development agreement. When they do, the allowable land uses and other terms and

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conditions of approval are negotiated between the parties, subject to the public agencies' ultimate approval. Although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body through its general plan, and consistent with any applicable specific plan.

The City of Beverly Hills last approved major development agreements in 2008 in conjunction with the Beverly Hilton Specific Plan and 9900 Wilshire Specific Plan. Although the process is not formalized in a document or in the City's municipal code, Staff historically fielded requests from a developer regarding interest in filing for a development agreement. In turn, Staff would notify the City Council, and Council would create an Ad Hoc Committee comprised of 2 designated Councilmembers. Staff would review the plans to ensure consistency with city policy / codes, and this information would be reviewed with the Ad Hoc Committee. At this time, Staff and the Ad Hoc would start the negotiations on the community benefit aspect of the agreement, and negotiations may continue until final adoption.

To assist in facilitating with the negotiations, the City historically hired a consultant to perform an economic analysis detailing the value of the project and forecasts of the projected value of the proposed entitlements. The difference in value was used as one part of the negotiations process.

The Planning Commission, as part of its review of the requested entitlements, reviewed the draft development agreements, as required by state law related to the development agreement process, to ensure it complied with state law and conformance with the City's General Plan. The Commission would not make a determination, but would provide recommendations to the City Council. The City Council would then review the agreement and make a determination at a regularly scheduled City Council meeting.

To understanding how other cities process development agreements, Staff surveyed the following 5 cities – Santa Monica, Culver City, West Hollywood, Glendale, and Burbank:

City of Santa Monica

Prior to the submittal of a development agreement application, city staff meets with the applicant to determine if the project is consistent with city policy and applicable codes. As a result of these early meetings, projects are sometimes modified. During this time, staff negotiates the community benefit aspect of the agreement.

After staff review, the developer holds a community meeting to gain input from residents. This is followed by a "float-up" process through the architectural review board and the planning commission. During this "float-up" process, neither the architectural review board nor planning commission take formal action on larger projects but rather provide feedback on the project and community benefit. The project is then sent to city council for review and approval.

Within the last 10 years, the City of Santa Monica has had approximately 21 development agreements processed.

City of Culver City

Although Staff was unable to make contact with Culver City, Staff located the city's municipal code regarding their process of development agreements, which is Attachment #2. Culver City's development agreement ordinances do not include any specific process or guidance regarding the mechanics of negotiating development agreements.

City of West Hollywood

Although Staff was unable to make contact with the West Hollywood, Staff was able to determine the development agreement process based off information from the city website.

Typically, a developer submits an application with a draft development agreement. The city attorney reviews the agreement and a city staff development agreement team is convened. The staff development agreement team negotiates the community benefit aspect of the agreement with the developer, and the developer updates the development agreement with the newly negotiated terms.

The application is then provided to the city attorney for legal review, and staff prepares a report for public hearing. The agreement is first heard at the planning commission, and the commission then makes recommendations to the city council. The city council then approves, denies or proposes modifications. If modifications are needed, it is sent back to the planning commission for review.

City of Glendale

Staff was unable to make contact and unable to find municipal codes that deal with their development agreement process.

City of Burbank

Once a developer decides to process a development agreement, staff meets with the developer to review the project. Negotiating terms for community benefit rests at the staff level; however, the city hasn't been historically aggressive in negotiating community benefit terms. It has just been recent that the city is starting to desire a community benefit aspect with the development agreements.

After staff review, the city undertakes briefings with 1 or 2 councilmembers at a time to ensure that all councilmembers are aware of the agreement contents before it is held during a regularly scheduled council meeting. In light of Brown Act concerns, the individual briefings cannot lead to further development agreement negotiations, as any further negotiations would be undertaken only after formal direction from the city council at an open meeting.

In the past 3 years, there have been approximately 10-12 development agreements processed. Some of these though were renewals from the Studios, such as Disney and Warner Brothers. Terms of the development agreements can vary in length depending on the projects; however, typical agreements with the Studios are up for renewal after 20 years.

FISCAL IMPACTS

There are no known fiscal impacts to the City at the moment.

RECOMMENDATION

It is recommended that the City Council review this report and provide direction to staff on how to proceed.



George Chavez

Approved By

Attachment 1

[Article 9 PLANNING AND ZONING](#)

[Division 6: Land Use and Zoning Related Provisions](#)

Chapter 9.60 DEVELOPMENT AGREEMENTS

9.60.010 Purpose

The purpose of this Chapter is to establish procedures and regulations for Development Agreements. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.020 Authority and Scope

This Chapter is adopted pursuant to Article 11, Section 7 of the California Constitution and pursuant to Government Code Section 65864 et seq. All Development Agreements entered into after the effective date of this Chapter shall be processed in accordance with the provisions of this Chapter. In performing his or her functions under this Chapter, the Planning Director shall act under the direction of the City Manager. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.030 Application Forms

The Planning Director shall prescribe the form of each application, notice and documents provided for or required under this Chapter for the preparation, processing, and implementation of Development Agreements. The application shall include a fiscal impact statement on the proposed development. The Planning Director may require an applicant for a Development Agreement to submit such information and supporting data as the Planning Director considers necessary to process the application. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.040 Qualified Applicant

An application for a Development Agreement may only be filed by a person who has a legal or equitable interest in the real property for which a Development Agreement is sought or the authorized representative of such a person. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.050 Proposed Agreement

Each application shall be accompanied by the form of Development Agreement proposed by the applicant. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.060 Filing of Application

The Planning Director shall endorse on the application the date it is received. The Planning Director shall review the application and may reject the application if it is not completed in the manner required by this Chapter. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.070 Review of Application

The application shall be reviewed by the Planning Director. After reviewing the application and any other pertinent information, the Planning Director shall prepare a staff report. The staff report shall analyze the proposed development and shall contain a recommendation as to whether or not the Development Agreement

proposed or in an amended form should be approved or disapproved. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.080 Processing

A. The Planning Commission shall consider the proposed development agreement and make a recommendation thereon to the City Council in the manner set forth in this Chapter. The Planning Commission shall conclude its consideration of and make its recommendation on the proposed development agreement within ninety days of the time specified for the public hearing in the notice of intention. The applicant may agree to extend this ninety-day review period.

B. In addition to formal consideration of the proposed development agreement by the Planning Commission pursuant to this Section, the City Council may establish procedures for early conceptual review of the development agreement proposal by the City Council and City Boards and Commissions or a combination thereof preceding the Planning Commission's formal consideration. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.090 Notice of Intention

Upon completion of the staff report required by Section 9.60.070, the Planning Director shall give notice of intention to consider adoption of a Development Agreement. The notice shall contain:

A. The time and place of the public hearing.

B. A general explanation of the Development Agreement including a general description of the property proposed to be developed.

C. Other information that the Planning Director considers necessary or desirable. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.100 Notice Requirements

A. The Planning Commission shall hold a public hearing on the proposed Development Agreement at the time and place specified in the notice.

B. All notice required by this Chapter shall be given in the following manner:

1. Mailing or delivery to the applicant and to all persons, including businesses, corporations or other public or private entities, shown on the last equalized assessment roll as owning real property within 500 feet of the property which is the subject of the development agreement.

2. Mailing or delivery to all tenants of property within 500 feet of the property which is the subject of the development agreement.

3. Mailing by first class mail to any person who has filed a written request therefor with the Planning Director.

4. Publication at least once in a newspaper of general circulation published and circulated in the City.

C. The failure to receive notice by any person entitled thereto by law or this Chapter does not affect the authority of the City to enter into a Development Agreement. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.110 Required Findings

The Planning Commission shall make its recommendation to the City Council in writing. The recommendation shall include whether or not the proposed Development Agreement:

- A. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;
- B. Is compatible with the uses authorized in the district in which the real property is located;
- C. Is in conformity with the public necessity, public convenience, general welfare, and good land use practices;
- D. Will be detrimental to the health, safety and general welfare;
- E. Will adversely affect the orderly development of the property; and
- F. Will have a positive fiscal impact on the City. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.120 Hearing by City Council

After the recommendation of the Planning Commission or after the expiration of the time period specified in Section 9.60.080, the Planning Director shall give notice of a public hearing before the City Council in the manner provided for in Section 9.60.100. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.130 Decision by City Council

- A. After it completes the public hearing and considers the recommendation, if any, of the Planning Commission, the City Council may accept, modify or disapprove the proposed Development Agreement. It may, but need not, refer the matters not previously considered by the Planning Commission during its hearing back to the Planning Commission for report and recommendation. The Planning Commission shall hold a public hearing on matters referred back to it by the City Council.
- B. The Development Agreement may not be approved unless the City Council finds that the Development Agreement is consistent with the general plan and any applicable specific plan. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.140 Approval of Development Agreement

The Development Agreement shall be approved by the adoption of an ordinance. Upon the adoption of the ordinance, the City shall enter into the Development Agreement by the execution thereof by the City Manager. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.150 Amendment and Cancellation

- A. Either the City or the applicant or successor in interest thereto may propose an amendment or cancellation in whole or in part of the Development Agreement.
- B. The procedure for proposing and approving an amendment to or cancellation in whole or in part of the Development Agreement shall be the same as the procedure for entering into a Development Agreement.
- C. Except as provided for in Section 9.60.180, the development agreement may only be amended or cancelled in whole or in part by the mutual consent of all parties to the Development Agreement. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.160 Recordation

No later than ten days after the City enters into the development agreement, the City Clerk shall record with the County Recorder a copy of the Development Agreement. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.170 Periodic Review

- A. The City Council shall review the Development Agreement at least every twelve months from the date the development agreement is entered into.
- B. The Planning Director shall give the applicant or successor in interest thereto at least ten days' advance notice of the time at which the City Council will review the Development Agreement.
- C. The applicant or successor in interest thereto shall demonstrate good faith compliance with the terms of the Development Agreement.
- D. If, as a result of such periodic review, the City Council finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with the terms or conditions of the Development Agreement, the City Council may commence proceedings to enforce, modify or terminate the Development Agreement. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.180 Modification or Termination

- A. If upon a finding under Section 9.60.170, the City Council determines to proceed with modification or termination of the Development Agreement, the City Council shall give notice to the applicant or successor in interest thereto of its intention to do so. The notice shall contain:
 - 1. The time and place of the hearing;
 - 2. A statement as to whether or not the City Council proposes to modify or terminate the development agreement;
 - 3. Any proposed modification to the development agreement; and
 - 4. Other information which the City Council considers necessary to inform the applicant or successor in interest thereto of the nature of the hearing.
- B. At the time set for the hearing on the modification or termination, the City Council may take such action as it deems necessary to protect the interests of the City. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

9.60.190 Irregularity in Proceedings

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 as to any matter pertaining to the application, notice, finding, record, hearing, report, recommendation, or any other matters of procedure whatsoever unless after an examination of the entire record the court is of the opinion that the error complained of was prejudicial and that a different result would have been probable if the error had not occurred or existed. (Added by Ord. No. 2486CCS §§ 1, 2, adopted June 23, 2015)

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Attachment 2

CHAPTER 17.590: DEVELOPMENT AGREEMENTS

Section

- 17.590.005 Purpose
- 17.590.010 Applicability
- 17.590.015 Application Filing, Processing and Review
- 17.590.020 Public Hearings
- 17.590.025 Contents of Development Agreement
- 17.590.030 Execution and Recordation
- 17.590.035 Environmental Review
- 17.590.040 Periodic Review
- 17.590.045 Amendment or Cancellation of Development Agreement
- 17.590.050 Effect of Development Agreement
- 17.590.055 Approved Development Agreements

§ 17.590.005 PURPOSE.

This Chapter provides procedures and requirements for the review and approval of development agreements consistent with the provisions of State law.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.010 APPLICABILITY.

A. Initiation. Consideration of a Development Agreement may be initiated by:

1. The Council; or
2. Property owner(s) or other person having a legal or equitable interest in the property proposed to be subject to the agreement.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.015 APPLICATION FILING, PROCESSING AND REVIEW.

A. Owner's Request. An owner of real property may request and apply through the Division to enter into a Development Agreement, provided that:

1. The status of the applicant as property owner or bona fide representative of the owner is established to the satisfaction of the Director;
2. The application is accompanied by all documents, information, and materials required by the Division.

B. Director Review. The Director shall receive, review, process, and prepare recommendations for Commission and Council consideration on all applications for development agreements.

C. Concurrent Processing and Public Hearings. All development-related applications shall be processed and scheduled for public hearing concurrently with the application for a Development Agreement. The Council shall be the review authority for the Development Agreement and all associated applications.

D. Fees. The application for a Development Agreement shall include the processing fee established by the City Council Fee Resolution. Additionally, appropriate fees shall be established and collected for periodic reviews conducted by the Director in compliance with Subsection 17.590.040.A. (Periodic Review).

(Ord. No. 2005-007 § 1 (part))

§ 17.590.020 PUBLIC HEARINGS.

A. Commission Hearing. Upon finding the application for a Development Agreement complete, the Director shall set the date for a public hearing before the Commission, in compliance with Chapter 17.630 (Public Hearings and Administrative Review). Following conclusion of a public hearing, the Commission shall adopt a resolution and make a written recommendation to the Council that it approve, conditionally approve, or deny the application.

B. Council Hearing. Upon receipt of the Commission's recommendation, the City Clerk shall set a date for a public hearing before the Council in compliance with Chapter 17.630 (Public Hearings and Administrative Review). Following conclusion of the public hearing, the Council shall approve, conditionally approve, or deny the application, with appropriate findings in compliance with Subsection 17.590.020.E. (Required Findings) below.

If the Council proposes to adopt a substantial modification to the Development Agreement not previously considered by the Commission during its hearings, the proposed modification shall be first referred back to the Commission for its recommendation, in compliance with State law (Cal. Gov't Code § 65857). Failure of the Commission to report back to the Council within 40 days after the referral, or within a longer time set by the Council, shall be deemed a recommendation for approval of the proposed modification.

C. Notice of the Hearings. Notice of the hearings, outlined in Subsection 17.590.020.A. (Commission Hearing) and Subsection 17.590.020.B. (Council Hearing) above, shall be given in the form of a notice of intention to consider approval of a development agreement, in compliance with State law (Cal. Gov't Code § 65867).

D. Adopting Ordinance. Should the Council approve or conditionally approve the application, it shall, as a part of the action of approval, direct the preparation of a Development Agreement embodying the conditions and terms of the application as approved or conditionally approved, as well as an ordinance authorizing execution of the development agreement by the Council, in compliance with State law (Cal. Gov't Code § 65867.5).

E. Required Findings. The ordinance shall contain the following findings, and the facts supporting them. It is the responsibility of the applicant to establish the evidence in support of the required findings:

1. The Development Agreement is in the best interests of the city, promoting the public interest and welfare;

2. The Development Agreement is consistent with all applicable provisions of the General Plan, any applicable Specific Plan, and this Title;

3. The Development Agreement is in compliance with the conditions, requirements, restrictions, and terms of Subsections 17.590.025.A. (Mandatory Contents) and Subsection 17.590.025.B. (Permissive Contents), below.

F. Referendum. The ordinance is subject to referendum in compliance with State law (Cal. Gov't Code § 65867.5).

(Ord. No. 2005-007 § 1 (part))

§ 17.590.025 CONTENTS OF DEVELOPMENT AGREEMENT.

A. Mandatory Contents. A Development Agreement entered into in compliance with this Chapter shall contain the mandatory provisions (e.g., conditions, requirements, restrictions, and terms) specified by State law (Cal. Gov't Code § 65865.2 [Agreement Contents]).

B. Permissive Contents. A Development Agreement entered into in compliance with this Chapter may contain the permissive provisions (e.g., conditions, requirements, restrictions, and terms) specified by State law (Cal. Gov't Code § 65865.2 [Agreement Contents]), and any other terms determined to be appropriate and necessary by the Council, including provisions for the payment to the city of monetary consideration.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.030 EXECUTION AND RECORDATION.

A. Effective Date. The city shall not execute any development agreement until on or after the date on which the ordinance approving the agreement becomes effective, and until it has been executed by the applicant.

B. Conditioning Approval. The provisions of this Chapter shall not be construed to prohibit the Director, Commission or Council from conditioning approval of a discretionary permit or entitlement on the execution of a Development Agreement, where the condition is otherwise authorized by law.

C. Recordation. A Development Agreement shall be recorded with the County Recorder no later than 10 days after it is executed, in compliance with State law (Cal. Gov't Code § 65868.5).

(Ord. No. 2005-007 § 1 (part))

§ 17.590.035 ENVIRONMENTAL REVIEW.

The approval or conditional approval of a Development Agreement in compliance with this chapter shall be deemed a discretionary act for purposes of CEQA.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.040 PERIODIC REVIEW.

A. Periodic Review. Every Development Agreement approved and executed in compliance with this Chapter shall be subject to periodic review by the Director during the full term of the agreement.

Appropriate fees to cover the city's costs to conduct the periodic reviews shall be collected from the contracting party, in compliance with § 17.590.015 (Application Filing, Processing and Review) above.

B. Purpose of Periodic Review. The purpose of the periodic review shall be to determine whether the contracting party or the successor-in-interest has complied in good faith with the terms and conditions of the Development Agreement. The burden of proof shall be on the applicant or contracting party or the successor to demonstrate compliance to the full satisfaction of, and in a manner prescribed by, the City.

C. Result of Periodic Review. If, as a result of a periodic review in compliance with this section, the Director finds and determines, on the basis of substantial evidence, that the contracting party or the successor-in-interest has not complied in good faith with the terms or conditions of the agreement, the Director shall notify the Commission, which may recommend to the Council that the agreement be terminated or modified.

The procedures for the termination or modification hearing shall comply with § 17.590.020 (Public Hearings) above.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.045 AMENDMENT OR CANCELLATION OF DEVELOPMENT AGREEMENT.

A Development Agreement may be amended or canceled, in whole or in part, by mutual consent of all parties to the agreement, or their successor-in-interest, in compliance with State law (Cal. Gov't Code § 65868), or as set forth in the agreement. The requested amendment or cancellation shall be processed in the same manner specified by this Chapter for the adoption of a Development Agreement.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.050 EFFECT OF DEVELOPMENT AGREEMENT.

A. Rules, Regulations and Policies. Unless otherwise provided by the Development Agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement and construction standards and specifications, and Building Code provisions 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.

B. State Law. In compliance with State law (Cal. Gov't Code § 65866), unless specifically provided for in the Development Agreement, the agreement does not prevent the City, in subsequent actions applicable to the property, from applying new rules, regulations, and policies that do not conflict with those rules, regulations, and policies applicable to the property under the Development Agreement. Further, a Development Agreement does not prevent the City from conditionally approving or denying any subsequent development project application, on the basis of existing or new rules, regulations, and policies.

(Ord. No. 2005-007 § 1 (part))

§ 17.590.055 APPROVED DEVELOPMENT AGREEMENTS.

Development Agreements approved by the Council shall be on file with the City Clerk.

(Ord. No. 2005-007 § 1 (part))

Attachment 3

Chapter 19.66 Development Agreements

19.66.010 Purpose.

This chapter establishes procedures and requirements for the review and approval of development agreements consistent with the provisions of state law.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.020 Application.

A. *Owner's Request.* An owner of real property may request and apply through the department to enter into a development agreement provided that:

1. The status of the applicant as property owner or bona fide representative of the owner is established to the satisfaction of the Director;

2. The application is accompanied by all documents, information, and materials required by the department.

B. *Director Review.* The Director shall receive, review, process, and prepare recommendations for Commission and Council consideration on all applications for development agreements.

C. *Concurrent Processing and Public Hearings.* All development-related applications shall be processed and scheduled for public hearing concurrently with the application for a development agreement. The Council shall be the review authority for the development agreement and all associated applications.

D. *Fees.* The application for approval of a development agreement shall include the processing fee established by the city's Fee Resolution. Additionally, appropriate fees shall be established and collected for periodic reviews conducted by the Director in compliance with Section 19.66.070(A), below.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.030 Public Hearings.

A. *Commission Hearing.* The Director, upon finding the application for a development agreement complete, shall set the date for a public hearing before the Commission in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of a public hearing, the Commission shall adopt a resolution and make a written recommendation to the Council that it approve, conditionally approve, or deny the application.

B. *Council Hearing.* Upon receipt of the Commission's recommendation, the City Clerk shall set a date for a public hearing before the Council in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of the public hearing, the Council shall approve, conditionally approve, or deny the application with appropriate findings in compliance with subsection (E) (Required Findings), below.

If the Council proposes to adopt a substantial modification to the development agreement not previously considered by the Commission during its hearings, the proposed modification shall be first referred back to the Commission for its recommendation, in compliance with state law (Government Code Section 65857). Failure of the Commission to report back to the Council within forty days after the referral, or within a longer time set by the Council, shall be deemed a recommendation for approval of the proposed modification.

C. *Notice of the Hearings.* Notice of the hearings outlined in subsections (A) and (B), above, shall be given in the form of a notice of intention to consider approval of a development agreement in compliance with state law (Government Code Section 65867).

D. *Adopting Ordinance.* Should the Council approve or conditionally approve the application, it shall, as a part of the action of approval, direct the preparation of a development agreement embodying the conditions and terms of the

application as approved or conditionally approved by it, as well as an ordinance authorizing execution of the development agreement by the Council, in compliance with state law (Government Code Section 65867.5).

E. *Required Findings.* The ordinance shall contain the following findings and the facts supporting them. It is the responsibility of the applicant to establish the evidence in support of the required findings.

1. The development agreement is in the best interests of the city, promoting the public interest and welfare;
2. The development agreement is consistent with all applicable provisions of the General Plan, any applicable specific plan, and this Zoning Ordinance;
3. The development agreement does not:
 - a. Adversely affect the comfort, health, peace, or welfare, or valuation of property, of persons residing or working in the vicinity of the proposed development; or
 - b. Endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or general welfare.
4. The development agreement is in compliance with the conditions, requirements, restrictions, and terms of Sections 19.66.040(A) (Mandatory contents) and 19.66.040(B) (Permissive contents), below.

F. *Referendum.* The ordinance is subject to referendum in compliance with state law (Government Code Section 65867.5).

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.040 Content of Development Agreement.

A. *Mandatory Contents.* A development agreement entered into in compliance with this chapter shall contain the mandatory provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]).

B. *Permissive Contents.* A development agreement entered into in compliance with this chapter may contain the permissive provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]), and any other terms determined to be appropriate and necessary by the Council, including provisions for the payment to the city of monetary consideration.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.050 Execution and Recordation.

A. *Effective Date.* The city shall not execute any development agreement until on or after the date on which the ordinance approving the agreement becomes effective, and until it has been executed by the applicant.

B. *Execution.* The applicant shall submit a signed copy of the development agreement before the ordinance approving the agreement is placed on the City Council agenda for adoption. Should the applicant fail or refuse to sign the development agreement, the City Council will adopt a resolution denying the application.

C. *Other Permits or Entitlements.* The provisions of this chapter shall not be construed to prohibit the Director, Commission or Council from conditioning approval of a discretionary permit or entitlement on the execution of a development agreement where the condition is otherwise authorized by law.

D. *Recordation.* A development agreement shall be recorded with the County Recorder no later than ten days after it is executed, in compliance with state law (Government Code Section 65868.5).

(Ord. 15-956 § 6, 2015; Ord. 01-594 § 2 (Exh. A), 2001)

19.66.060 Environmental Review.

The approval or conditional approval of a development agreement in compliance with this chapter shall be deemed a discretionary act for purposes of the California Environmental Quality Act (CEQA).

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.070 Periodic Review.

A. *Periodic Review.* Every development agreement approved and executed in compliance with this chapter shall be subject to periodic review by the Director during the full term of the agreement. Appropriate fees to cover the city's costs to conduct the periodic reviews shall be collected from the contracting party in compliance with Section 19.66.020(D) (Application), above.

B. *Purpose of Periodic Review.* The purpose of the periodic review shall be to determine whether the contracting party or the successor-in-interest has complied in good faith with the terms and conditions of the development agreement. The burden of proof shall be on the applicant or contracting party or the successor to demonstrate compliance to the full satisfaction of, and in a manner prescribed by, the city.

C. *Result of Periodic Review.* If, as a result of a periodic review in compliance with this section, the Director finds and determines, on the basis of substantial evidence, that the contracting party or the successor-in-interest has not complied in good faith with the terms or conditions of the agreement, the Director shall notify the Commission which may recommend to the Council that the agreement be terminated or modified.

The procedures for the termination or modification hearing shall comply with Section 19.66.030 (Public Hearings and Notice), above.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.080 Amendment or Cancellation of Development Agreement.

A development agreement may be amended or canceled, in whole or in part, by mutual consent of all parties to the agreement, or their successor-in-interest, in compliance with state law (Government Code Section 65868), or as set forth in the agreement. The requested amendment or cancellation shall be processed in the same manner specified by this chapter for the adoption of a development agreement.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.090 Effect of Development Agreement.

Unless otherwise provided by the development agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement and construction standards and specifications, and Building Code provisions 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.

Unless specifically provided for in the development agreement, the 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. Further, a development agreement does not prevent the city from conditionally approving or denying any subsequent development project application on the basis of existing or new rules, regulations, and policies.

(Ord. 01-594 § 2 (Exh. A), 2001)

19.66.100 Approved Development Agreements.

Development agreements approved by the Council shall be on file with the City Clerk.

(Ord. 01-594 § 2 (Exh. A), 2001)

Attachment 4

GOVERNMENT CODE

SECTION 65864-65869.5

65864. The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

65865. (a) Any city, county, or city and county, may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article.

(b) Any city may enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of the property as provided in this article. However, the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement. If the annexation is not completed within the time specified in the agreement or any extension of the agreement, the agreement is null and void.

(c) Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the property owner or other person having a legal or equitable interest in the property.

(d) A city, county, or city and county may recover from applicants the direct costs associated with adopting a resolution or ordinance to establish procedures and requirements for the consideration of development agreements.

(e) For any development agreement entered into on or after January 1, 2004, a city, county, or city and county shall comply with Section 66006 with respect to any fee it receives or cost it recovers pursuant to this article.

65865.1. Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not

complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

65865.2. 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 that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time.

The agreement may also include terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

65865.3. (a) Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation. The holder of the development agreement and the city shall have the same rights and obligations with respect to each other as if the property had remained in the unincorporated territory of the county.

(b) The city may modify or suspend the provisions of the development agreement if the city determines that the failure of the city to do so would place the residents of the territory subject to the development agreement, or the residents of the city, or both, in a condition dangerous to their health or safety, or both.

(c) Except as otherwise provided in subdivision (d), this section applies to any development agreement which meets all of the following requirements:

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.

(d) This section does not apply to any territory subject to a development agreement if that territory is incorporated and the effective date of the incorporation is prior to January 1, 1987.

65865.4. Unless amended or canceled pursuant to Section 65868, or modified or suspended pursuant to Section 65869.5, and except as otherwise provided in subdivision (b) of Section 65865.3, a development agreement shall be enforceable by any party thereto notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the city, county, or city and county entering the agreement, which alters or amends the rules, regulations, or policies specified in Section 65866.

65865.5. (a) Notwithstanding any other law, after the amendments required by Sections 65302.9 and 65860.1 have become effective, the legislative body of a city or county within the Sacramento-San Joaquin Valley shall not enter into a development agreement for property that is located within a flood hazard zone unless the city or county finds, based on substantial evidence in the record, one of the following:

(1) The facilities of the State Plan of Flood Control or other flood management facilities protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(2) The city or county has imposed conditions on the development agreement that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas.

(3) The local flood management agency has made adequate progress on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for property located within a flood hazard zone, intended to be protected by the system. For urban and urbanizing areas protected by project levees, the urban level of flood protection shall be achieved by 2025.

(4) The property in an undetermined risk area has met the urban level of flood protection based on substantial evidence in the record.

(b) The effective date of amendments referred to in this section shall be the date upon which the statutes of limitation specified in subdivision (c) of Section 65009 have run or, if the amendments and any associated environmental documents are challenged in court, the validity of the amendments and any associated environmental documents has been upheld in a final decision.

(c) This section does not change or diminish existing requirements of local flood plain management laws, ordinances, resolutions, or regulations necessary to local agency participation in the national flood insurance program.

65866. 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 a city, county, or city and county, 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 a city, county, or city and county from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations, and policies.

65867. A public hearing on an application for a development agreement shall be held by the planning agency and by the legislative body. Notice of intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the development agreement.

65867.5. (a) A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.

(b) A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.

(c) A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.

65868. A development agreement may be amended, or canceled in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. Notice of intention to amend or cancel any portion of the agreement shall be given in the manner provided by Section 65867. An amendment to an agreement shall be subject to the provisions of Section 65867.5.

65868.5. No later than 10 days after a city, county, or city and county enters into a development agreement, the clerk of the legislative body shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. From and after the time of such recordation, the agreement shall impart such notice thereof to all persons as is afforded by the recording laws of this state. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

65869. A development agreement shall not be applicable to any development project located in an area for which a local coastal program is required to be prepared and certified pursuant to the requirements of Division 20 (commencing with Section 30000) of the Public Resources Code, unless: (1) the required local coastal program has been certified as required by such provisions prior to the date on which the development agreement is entered into, or (2) in the event that the required local coastal program has not been certified, the California Coastal Commission approves such development agreement by formal commission action.

65869.5. In the event that state or federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.
