

(O-83-61) --
REV.

ORDINANCE NUMBER O- **15836** (New Series)

Adopted on **OCT 25 1982**

AN ORDINANCE AMENDING CHAPTER X OF THE SAN DIEGO
MUNICIPAL CODE BY ADDING ARTICLE 5, DIVISION 1
REGARDING DEVELOPMENT AGREEMENTS

BE IT ORDAINED, by the Council of The City of San Diego, as
follows:

Section 1. That Chapter X of the San Diego Municipal Code
be and it is hereby amended by adding Article 5, Division 1 to
read as follows:

ARTICLE 5
DEVELOPMENT AGREEMENTS

DIVISION 1

SEC. 105.0101 PURPOSE AND INTENT

A. It is the intent of the Development Agreements'
regulations to promote and facilitate orderly and planned
growth and development through the provision of certainty
in the development approval process by the City and through
corresponding assurances by the developers.

B. The purpose of these regulations, therefore, are
as follows:

1. To eliminate uncertainty in the development
approval process, which results in a waste of
resources that contributes to escalating costs of
development and which, in turn, discourages investment
and produces higher prices for consumers.

2. To assure applicants for development projects that, upon approval of their project, they may proceed in accordance with existing policies, rules and regulations.

3. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of government.

4. To provide a mechanism for adding supplementary regulations to existing ordinances or development standards for particular projects and to provide a mechanism for allowing exemptions from ordinances or regulations in order to promote flexibility and to respond more selectively to given development proposals.

5. To enable the transfer of development rights within project borders to secure or protect open space and to enable more efficient use of the property without penalty to the applicant or violation of good planning principles.

6. To encourage plan implementation through a more flexible development procedure.

7. To encourage the achievement of growth management goals and objectives, including assurances of adequate public facilities at the time of development, proper timing and sequencing of development, effective capital improvements programming and appropriate development incentives.

8. To streamline the development approval process by coordinating various discretionary approvals presently occurring in separate processes.

SEC. 105.0102 AUTHORIZATION

These regulations are adopted pursuant to the authority granted by California Government Code, Sections 65864 - 65869.5--Development Agreements (1979). A development agreement shall be approved by ordinance of the City Council pursuant to these regulations.

SEC. 105.0103 PROCEDURE FOR DEVELOPMENT AGREEMENT

A. Initiation by Application.

An application for a development agreement may be made to the Planning Director in accordance with the procedures set forth herein.

1. Application may be made by any person having a legal or equitable interest in the subject real property. If made by the holder of an equitable interest, the application shall be accompanied by a verified title report and by a notarized statement of consent to proceed with the proposed agreement executed by the holder of the legal interest.

2. Application may be made by the Planning Commission or the City Council. If made by the Planning Commission or City Council, the City shall obtain and attach a notarized statement of consent to proceed with the proposed agreement executed by the owner of the subject property.

B. Contents of the Application.

The application shall be on a form prescribed by the City Planning Director and shall be accompanied by a proposed ordinance and development agreement.

C. Review by Planning Director.

Upon submission of an application for a development agreement, the Planning Director shall review the application and accompanying documentation for legal sufficiency, compliance with technical requirements and consistency with the adopted Progress Guide and General Plan, applicable specific plans and relevant City policies. Upon the completion of such review, the Planning Director shall set the matter for a public hearing before the Planning Commission.

D. Planning Commission Hearing.

The Planning Director shall set a date for a public hearing before the Planning Commission and give notice of the time, place and purpose of such hearing in the following manner:

1. By at least one publication thereof in a newspaper of general circulation that is published on five or more days in a calendar week in the City of San Diego, not less than ten days prior to the date of the hearing; and
2. By depositing in the United States mail, postage prepaid, at least ten days prior to the date of such hearing, a notice addressed to the owner or owners of each parcel of land within 300 feet of the exterior boundaries of the property to be subject to the development agreement.

The last known name and address of each owner as shown on the records of the County Assessor may be used for this notice; and

3. By depositing in the United States mail, postage prepaid, at least ten days prior to the date of the hearing, a notice to any person who has filed a written request therefor with the Planning Commission. Such a request may be submitted at any time during the calendar year and shall apply for the balance of such calendar year.

4. In the event that the number of owners to whom notice would be sent pursuant to paragraph 2 above is greater than 1,000, the Planning Commission may, as an alternative to the notice required by paragraph 2 above, provide notice pursuant to this paragraph. Such notice shall be given at least ten days prior to the hearing by either of the following procedures:

a. By placing a display advertisement of at least one-fourth page in a newspaper having general circulation within the area affected by the proposed development agreement; or

b. By placing an insert with any generalized mailing sent by the City to property owners in the area affected by the proposed development agreement, such as billing for City services.

5. All required notices shall be headed "Notice of Public Hearing" and shall recite in legible characters:

a. The boundaries of the area proposed to be subject to the development agreement, either by

diagram, plat or brief description.

b. A general explanation of the proposed development agreement.

c. A statement that the Planning Commission reserves the right to make any of the following recommendations to the City Council:

(1) That the development agreement be adopted; or

(2) That the development agreement not be adopted; or

(3) That the development agreement be adopted with such changes which in the opinion of the Planning Commission best serve the public interest.

d. The date, time and place of hearing before the Planning Commission.

e. A statement that any person may appear and be heard before said Planning Commission.

E. Planning Commission Recommendation.

At the conclusion of the public hearing, the Planning Commission shall make a report and recommendation to the City Council, by the affirmative vote of not less than a majority of its total voting members, as follows:

1. That the development agreement be adopted as proposed;

2. That the development agreement be adopted with modifications, as proposed by the Planning Commission; or

3. That the development agreement be denied.

Any action taken by the Planning Commission shall be by resolution and shall include written findings specifying the facts and information relied upon by the Commission in rendering its decision and recommendation. A copy of the resolution shall be filed with the City Clerk and with the Planning Director.

F. Failure of Planning Commission to Approve.

If the Planning Commission fails to recommend approval of the requested development agreement, no further action shall be taken on the application unless, within ten days of the hearing on the matter by the Planning Commission, the applicant files with the Planning Commission a request for consideration of the matter by the City Council. If such a request is filed with the Planning Commission, the request shall be forwarded to the City Clerk for placement of the item on the City Council agenda for a public hearing.

G. City Council Hearing.

Upon receipt of the notice of action by the Planning Commission or request for a public hearing by the applicant, the City Clerk shall thereupon set the matter for a public hearing before the City Council, giving notice of the time, place and purpose of such hearing in the same manner and in the same terms as provided in Section 105.0103 E, above.

H. Action by the City Council/Required Findings.

The City Council shall consider the proposed

development agreement at the public hearing on the date set for said hearing or on the date or dates to which such hearing may be continued from time to time by the City Council. The City Council may:

1. Approve the development agreement as recommended by the Planning Commission;

2. Approve the development agreement with modifications; or

3. Reject the development agreement as recommended by the Planning Commission, in whole or in part, and take such further action as it deems to be in the public interest.

Any such action shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the Council.

The City Council, in approving a development agreement, must find that the agreement is consistent with the adopted Progress Guide and General Plan for the City of San Diego, applicable specific plans and relevant City policies.

I. Ordinance.

The City Council shall approve such agreement by ordinance. The City Council's action shall be final and conclusive.

J. Execution of Development Agreement

If approved by the City Council, the development agreement shall become effective upon execution by the City, the applicant and by any other parties to the

agreement.

K. Notice of Decision of City Council

Within ten (10) days following rejection of a development agreement, the City Clerk shall give notice of such action to the applicant at the address shown on the application and to the Planning Commission through the Planning Director.

L. Recordation of Agreement

Within ten (10) days following complete execution of a development agreement, the City Clerk shall record with the County Recorder, a fully executed copy of the development agreement and ordinance, which shall describe the land subject thereto. The agreement shall be binding upon, and the benefits of the agreement shall inure to the parties and all successors in interest to the parties to the agreement.

SEC. 105.0104 FEES

The filing of an application for a development agreement pursuant to Section 105.0103 A.1 above by the holder of a legal or equitable interest in the subject property shall be accompanied by the payment of a filing fee.

This fee shall be in addition to, and not in substitution of, any other required fees for permits relative to development of the subject property and shall be for the purpose of defraying the costs associated with City review and action on the application.

SEC. 105.0105 COORDINATION OF DEVELOPMENT AGREEMENT
APPLICATION WITH OTHER DISCRETIONARY
APPROVALS

It is the intent of these regulations that the application for a development agreement will be made and considered simultaneously with the review of other necessary applications; including, but not limited to: rezoning, planned commercial, residential or industrial development and conditional use permits. If combined with an application for rezoning, planned development or conditional use permit, the application for a development agreement shall be submitted with said application and shall be processed, to the maximum extent possible, jointly to avoid duplication of hearings and repetition of information. A development agreement is not a substitute for, nor an alternative to, any other required permit or approval, and the applicant must comply with all other required procedures for development approval.

SEC. 105.0106 EXISTING AND SUBSEQUENTLY ADOPTED
CITY ORDINANCES, POLICIES, RULES
AND REGULATIONS

Unless otherwise provided by the development agreement, rules, regulations and official policies of the City governing permitted uses of the land governing density and governing design, improvement and construction standards and specifications applicable to the subject property, shall be those rules, regulations and official policies in force at the time of execution of the agreement. The adoption of a development agreement, however, shall not prevent the City, in subsequent actions

applicable to the property or to the City in general, from applying new rules, regulations and policies which do not conflict with those applicable to the property at the time of execution of the development agreement. The existence of the development agreement shall not 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.

SEC. 105.0107 SUBSEQUENTLY ADOPTED STATE AND FEDERAL LAWS

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, the provisions of the agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations, and every such development agreement shall so provide.

SEC. 105.0108 PERIODIC REVIEW, TERMINATION OR MODIFICATION

An adopted development agreement shall be reviewed at least every 12 months, at which time the owner(s) of the property subject to the development agreement shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such review, the City Council finds and determines, on the basis of substantial evidence, that the owner has not complied in good faith with the conditions of the agreement, the City Council may unilaterally terminate or modify the agreement.

SEC. 105.0109 AMENDING OR CANCELLATION OF AGREEMENT

A development agreement may be amended or cancelled, in whole or in part, by mutual consent of the parties to the agreement or their successors in interest. The procedure for amendment or cancellation shall be the same as that for adoption as provided by Section 105.0103 herein. Notice of intent to amend or cancel any portion of the agreement shall be given in the manner provided by Section 105.0103 E.

SEC. 105.0110 ENFORCEMENT

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 which alters or amends the rules, regulations or policies specified in Section 105.0106, or in the development agreement itself.

SEC. 105.0111 SEVERABILITY

If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons or places. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more

sections, subsections, paragraphs, sentences, clauses, phrases or portions, or the application thereof to any person or place, be declared invalid or unconstitutional.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By


Frederick C. Conrad
Chief Deputy City Attorney

FCC:clh:630
8/30/82
REV.10/11/83
Or.Dept:Plan.
O-83-61
Form=none

OCT 25 1982

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lucy Killea	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Charles G. Abdelnour, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 05 1982

OCT 25 1982

, and on _____

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California.

(Seal)

By Charles G. Abdelnour, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number

0 - 15836

Adopted

OCT 25 1982

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1982 NOV 10 AM 11:31
SAN DIEGO, CALIF.

CITY OF SAN DIEGO
12th floor, 202 C St.
San Diego, CA 92101

ATTN: PONTECORVO

IN THE MATTER OF

NO.

ORDINANCE NO. O-15836

ORDINANCE NO. O-15836
(New Series)
AN ORDINANCE AMENDING CHAPTER X OF THE SAN DIEGO MUNICIPAL CODE BY ADDING ARTICLE 5, DIVISION 1 REGARDING DEVELOPMENT AGREEMENTS.
Article 5, Division 1 is added to Chapter X of the Municipal Code. This article authorizes the use of development agreements in place of the usual processes associated with the approval and development of urban areas. The use of development agreements is authorized by California Government Code, Sections 65001 - 65005.5. The ordinance establishes the procedures which must be followed in entering a development agreement and provides for the administration of the agreement.
A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 12th Floor, City Administration Building, 202 "C" Street, San Diego, CA 92101.
Introduced on OCTOBER 5, 1982.
Passed and adopted by the Council of The City of San Diego on OCTOBER 25, 1982.
AUTHENTICATED BY:
PETE WILSON, Mayor of The City of San Diego, California
CHARLES G. ABDELNOUR, City Clerk of The City of San Diego, California.
SEAL
By MAYBELL L. PONTECORVO, Deputy
Published November 8, 1982

I, Charlene Casselman, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NO. O-15836
(New Series)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

November 8, 1982

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 8th day of Nov, 1982.

Charlene Casselman
(Signature)

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42.13