

Article 4: Agreements

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

Division 1: Development Agreement Procedures

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§124.0101 Purpose of Development Agreement Procedures

The purpose of these procedures is 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. The intent of these regulations is to provide a process for review and approval of Development Agreements in the City in accordance with state law, California Government Code sections 65864 and following.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§124.0102 How to Apply for a Development Agreement

An application for a Development Agreement shall be filed in accordance with section 112.0102 and the following provisions:

- (a) **Persons Who May Apply.** Any person who has a legal or equitable interest in the subject real property may file an application for a Development Agreement. If submitted by the holder of an equitable interest, the application must include a title report and a statement of consent to proceed with the proposed agreement executed by the holder of the legal interest and acknowledged before a Notary Public for the State of California.
- (b) **Accompanying Documents.** The application shall be accompanied by:
 - (1) Documentation that identifies the property and *development* to be covered by the Development Agreement and the type of vesting rights that the *applicant* is seeking with the Development Agreement;
 - (2) An analysis of how the proposed Development Agreement complies with applicable *land use plans*, zoning regulations, and public facilities financing plans;
 - (3) A description of the public benefit that will result from the Development Agreement in excess of what can be obtained through a *tentative map, development permit*, facilities benefit assessment, public facilities financing plan, or other regulations; and

- (4) Any technical studies necessary to support the proposed public benefit elements that would be in excess of what can be obtained through a *tentative map, development permit, facilities benefit assessment, public facilities financing plan, or other regulations.*
- (c) Notice of Application. A Notice of Application shall be provided in accordance with section 112.0301(a). The City Manager shall also mail the Notice of Application to the City Council no later than 10 *business days* after the date on which the application is *deemed complete*.
- (d) Review of Documents. The City Manager shall review the submittal documents for compliance with technical requirements and consistency with the applicable *land use plan, Local Coastal Program, and City policies* and may negotiate additions or modifications to the proposed agreement.
- (e) Fees and Deposits. The *applicant* for a Development Agreement shall pay a filing fee in accordance with section 112.0202 at the time of filing the application. This fee shall be in addition to any other required fees or deposits for permits relative to *development* of the property and shall be for the purpose of defraying the costs associated with City review and action on the application.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)

§124.0103 Contents of Development Agreements

- (a) A Development Agreement shall contain all of the provisions listed in California Government Code section 65865.2, including:
 - (1) The duration of the Development Agreement;
 - (2) The permitted uses of the property;
 - (3) The density or intensity of uses;
 - (4) The maximum height and size of proposed buildings;
 - (5) Provisions for reservation or dedication of land for public purposes; and
 - (6) Provisions requiring the *applicant* to submit annually an affidavit within 30 days of the anniversary date of the effective date of the Development Agreement demonstrating good faith compliance with the terms of the Development Agreement and specifying the party responsible for the cost of the periodic review in accordance with section 124.0107.

- (b) Where applicable, a Development Agreement shall also:
- (1) 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 uses and to the *density* or intensity of *development* set forth in the Development Agreement.
 - (2) Establish a construction schedule, with thresholds based on public facilities and services available through a phasing and timing program, which may require that construction be commenced within a specified time and that the project or phase thereof be completed within a specified time. The construction schedule shall indicate the minimum *development* necessary to assure the *applicant's* reasonable cost recovery for expenditures.
 - (3) Include terms and conditions relating to the *applicant's* financing of necessary public facilities and subsequent reimbursement over time.
- (c) The terms of the Development Agreement shall not preclude the inclusion of, and changes to, fees and exactions assessed on the property that is the subject of the Development Agreement assessed pursuant to facilities benefit assessments and public facilities financing plans, or other development impact fees and related fees adopted on a community or citywide basis.
- (d) The *applicant* or *applicant's* successor in interest shall be subject to additional City imposed fees, impositions, or monetary exactions that may be adopted following the effective date of the Development Agreement. Such fees, impositions or exactions shall be limited to the *applicant's* fair share contribution to impacts caused by the *development* and shall not duplicate any exactions or other mitigations or fees contributed or paid by the *applicant*.
- (e) The Development Agreement shall indemnify and hold the City and its officers and agents free and harmless from any and all claims and liability which might arise from the agreement or any performance by any party under the agreement.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)

§124.0104 Decision Process for Development Agreements

A decision on an application for a Development Agreement shall be made in accordance with Process Five and in the following manner:

- (a) **Planning Commission Recommendation.** The Planning Commission shall hold a public hearing to consider whether to recommend approval or denial of the Development Agreement in accordance with section 112.0509(b).
- (b) **City Council Action.** The City Council may approve or deny a Development Agreement by ordinance after receiving the Planning Commission’s recommendation. If the Planning Commission does not make a recommendation within 60 calendar days of the initial Planning Commission hearing, the City Council may take action on the Development Agreement. The City Council’s action is final.
- (c) **City Council Findings.** To approve a Development Agreement, the City Council must find that:
 - (1) The Development Agreement is consistent with the applicable *land use plans, Local Coastal Program, and the Land Development Code*; and
 - (2) The Development Agreement will provide significant public benefits in proportion to the rights granted under the Development Agreement; and
 - (3) The significant public benefits will be in excess of what can be obtained under existing policies and regulations, and otherwise could not reasonably be derived or provided except through the Development Agreement.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)*

§124.0105 Effective Date of Development Agreements

The effective date of a Development Agreement shall be determined by the terms of the Development Agreement.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§124.0106 Recordation of Development Agreements

The City Clerk shall forward a copy of the Development Agreement, and an ordinance that describes the land subject to the agreement, to the County Recorder for recordation no later than 10 *business days* after receipt of a fully executed Development Agreement. 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.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 3-1-2006 by O-19468 N.S.; effective 4-1-2006.)

§124.0107 Periodic Review of Development Agreements

- (a) The City Manager shall review an adopted Development Agreement at least every 12 months, at which time the owner of the property subject to the agreement shall be required to demonstrate good faith compliance with the terms of the agreement.
- (b) The City Manager shall submit a report summarizing the review to the City Council if it is determined that the *applicant* or the *applicant's* successor in interest is not in compliance with the terms of the Development Agreement. If after reviewing the report, and after a public hearing, the City Council finds on the basis of substantial evidence that the *applicant* or the *applicant's* successor in interest has not complied in good faith with the conditions of the agreement, the City Council may take action to terminate or modify the agreement pursuant to the terms of the agreement.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)

§124.0108 Amendment or Cancellation of Development Agreements

A Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. A decision on an amendment or cancellation shall be made in accordance with Section 124.0104.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§124.0109 Conformance with Existing and Subsequently Adopted Regulations

- (a) Local Regulations. Unless otherwise provided by the Development Agreement, the 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, or policies that 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 application for *development* on the basis of the existing or new rules, regulations, and policies.
- (b) State and Federal Regulations. If 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 the state or federal laws or regulations, and every Development Agreement shall so provide.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§124.0110 Enforcement of Development Agreements

Subject to the provisions of Section 124.0109, a Development Agreement is enforceable by any party thereto, notwithstanding any change in any applicable *land use plan* or specific plan, zoning, *subdivision*, or building regulation adopted by the City that alters or amends the rules, regulations, or official policies specified in the Land Development Code or in the Development Agreement.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)