

ARTICLE 69

Sec. 21-69 DEVELOPMENT AGREEMENTS

69.1 Purpose and authority: The lack of certainty in the approval of larger or phased 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, due to potential changes in development regulations, rules and planning ordinances.

The provisions of this Article will provide assurance to applicants for development projects that upon approval of a project, the applicant may proceed with the project in accordance with the policies, rules and regulations, and subject to conditions of approval in effect at the time of approval. Development agreements entered into pursuant to this Article will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.

Development agreements may also include provisions whereby applicants are reimbursed over time for financing public facilities and improvements installed in excess of those needed to serve the applicant's development project. These regulations are adopted for the purposes authorized and under the authority of Government Code Sections 65864-65869.5.

69.2 Applications:

- (a) The Planning Director shall prescribe the form for each application, notice and document provided for or required by these regulations for the preparation and implementation of development agreements.
- (b) The Planning Director may require an applicant to submit such pertinent information and supporting data as he considers necessary to process the application.
- (c) The application shall be accompanied by a fee(s) in an amount to be set by the Board of Supervisors.
- (d) The applicant shall present to the Planning Director, the written consent to the development agreement of all parties having any record title interest in the real property which is the subject to the development agreement.

69.3 Qualifications as an applicant: Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. Applicant includes authorized agent. The Planning Director may require an applicant to submit proof of his interest in the real property and of the authority of the agent to act for the applicant. Before processing the application, the Planning Director may obtain the opinion of the County Counsel as to the sufficiency of the applicant's interest in the real property to enter into the agreement.

69.4 Form of agreement: Applications shall be accompanied by a proposed development agreement prepared by the applicant. This requirement may be met by submittal of a development agreement consistent with the standard form of development agreements prepared by the Planning Department which may include specific proposals for changes in or additions to the language of the standard form.

69.5 Review of application: The Planning Director shall review the application and may reject it if it is incomplete or inaccurate for processing. If he finds that the application is complete, he shall accept it for filing. The Director shall review the application and determine the additional requirements necessary to complete the agreement. After receiving the required information, he shall prepare a staff report and recommendation and shall state whether or not the agreement proposed or in an amended form would be consistent with the General Plan and any applicable specific or community plan.

69.6 Public hearings and notice:

- (a) Public hearings shall be held on any application for a development agreement and subject to the same proceedings as provided for rezoning applications in Section 47.20.
- (b) Notice of the hearings shall be given as provided for rezoning applications in Section 47.20.
- (c) When a development agreement is for a project requiring a general plan amendment, specific or community plan amendment, rezoning, major use permit or any subdivision approval, consideration of the development agreement shall be concurrently with or subsequent to consideration of any of the entitlements identified above.

69.7 Recommendation by the Planning Commission: After the hearing by the Planning Commission, the Planning Commission shall make its recommendation in writing to the Board of Supervisors. The recommendation shall include the Planning Commission's determination whether or not the development agreement proposed:

- (a) Inconsistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan or community plan.
- (b) Is compatible with the uses authorized in, and the regulations prescribed for, the zoning district in which the real property is located.
- (c) Is in conformity with public convenience, general welfare and good land use practice.
- (d) Will be detrimental to the public health, safety and general welfare.
- (e) Will adversely affect the orderly development of property or the preservation of property values.

The recommendation of the Planning Commission shall include the reasons for the recommendation.

69.8 Decision by the Board of Supervisors:

- (a) After the Board of Supervisors completes its public hearing, it may accept, modify or disapprove the recommendation of the Planning Commission.
- (b) The Board of Supervisors may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the General Plan and any applicable specific or community plan.
- (c) If the Board of Supervisors approves the development agreement, it shall do so by the adoption of an ordinance.
- (d) After the ordinance approving the development agreement takes effect, the County may enter into the agreement.

69.9 Amendment or cancellation: Either party may propose an amendment to or cancellation in whole or in part of the development agreement previously entered into. The procedure for proposing and adoption of an amendment to or cancellation in whole or in part of the development agreement shall be the same as the procedure for entering into an agreement. However, where the Board of Supervisors initiates the proposed amendment to or cancellation of the development agreement, it shall first give at least thirty (30) days notice to the applicant of its intention to initiate such proceedings in advance of the public hearing by the Planning Commission.

69.10 Recordation of development agreement:

- (a) The applicant shall present the written consent to the development agreement of all parties having any record title interest in the real property which is the subject to the development agreement prior to recordation of the agreement.
- (b) Within ten (10) days after the Board of Supervisors enters into the development agreement, the County Clerk shall have the agreement recorded with the County Recorder. The agreement shall describe the land subject thereto.
- (c) If the parties to the agreement or their successors in interest amend or cancel the agreement, or if the Board of Supervisors terminates or modifies the agreement for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the County Clerk shall have notice of such action recorded with the County Recorder.

69.11 Periodic Review:

- (a) Time for and initiation for review:
 - 1. The Planning Commission shall review the development agreement every twelve (12) months from the date the agreement is entered into.
 - 2. The time for review may be modified by affirmative vote of at least three (3) members of the Planning Commission.

- (b) Notice of periodic review: The Planning Director shall begin the review proceeding by giving notice that the County intends to undertake a periodic review of the development agreement to the property owner or successor in interest. He shall give the notice at least thirty (30) days in advance of the time at which the matter will be considered by the Planning Commission.

- (c) Public hearing by Planning Commission: The Planning Commission shall conduct a public hearing at which time the property owner or successor in interest must demonstrate good faith compliance with the terms of the agreement.

- (d) Findings upon public hearing: The Planning Commission shall determine upon the basis of substantial evidence whether or not the applicant has, for the period under review, complied in good faith with the terms and conditions of the agreement.

- (e) Procedure upon findings:
 - 1. If the Planning Commission determines on the basis of substantial evidence that the property owner has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period is concluded.
 - 2. If the Planning Commission finds and determines on the basis of substantial evidence the property owner has not complied in good faith with the terms and conditions of the agreement during the period under review, the Planning Commission may initiate proceedings to modify or terminate the agreement.
 - 3. The property owner may appeal a determination pursuant to Subsection 69.11(e)2 above the Board of Supervisors as provided for in Section 58.30.

69.12 Modification or termination;

- (a) If upon a finding under Subsection 69.11(e)2, the Planning Commission determines to proceed with modification or termination of the agreement, the Planning Director shall transmit to the Board of Supervisors all pertinent materials concerning the periodic review and a staff report setting forth the reasons for the decision by the Planning Commission.
- (b) Upon receipt of the staff report pursuant to Paragraph (a) above, the Board of Supervisors shall hold a public hearing on the matter scheduled and noticed as required in Section 57.3.
- (c) At the time and place set for the hearing on modification or termination, the property owner shall be given an opportunity to be heard. The Board of Supervisors may refer the matter back to the Planning commission for further proceedings or for report and recommendation. The Board of Supervisors may impose those conditions to the action it takes as it considers necessary to protect the interests of the County. The decision of the Board of Supervisors is final.

(Added by Ord. No. 1749, 7/7/1988)