
Chapter 9.64 Development Agreements

Sections:

- 9.64.010 – Purpose, Authority and Findings
- 9.64.020 – Qualifications of Applicant
- 9.64.030 – Application Submittal Requirements
- 9.64.040 – Application Fee
- 9.64.050 – Investigation and Report
- 9.64.060 – Action by Review Authorities
- 9.64.070 – Amendment or Cancellation of Development Agreements
- 9.64.080 – Recordation
- 9.64.090 – Periodic Review
- 9.64.100 – Modification, Termination or Suspension

9.64.010 – Purpose, Authority and Findings

This Chapter establishes procedures and requirements for consideration of development agreements. The purpose of this Chapter is to recognize that major, multi-phased development projects may require the developer to commit a substantial investment in “up front” costs and that some assurances that changing regulations will not adversely affect the entitlements of the project may be necessary to justify the “up front” costs. The purpose of this Chapter is also to recognize that the Town has an interest in assuring that large scale, long-term projects are implemented as approved. Development agreements may provide the mechanism to provide needed stability for such projects. These provisions are adopted under the authority of Title 7, Division 1, Chapter 4, Article 2.5 of the California Government Code (commencing at Section 65864). The findings and purposes as set forth in California Government Code Section 65865.

- A. Assurances to the applicant.** A development agreement is intended to provide assurance to the applicant that an approved project may proceed subject to the policies, regulations, rules, and conditions of approval applicable to the project at the time of approval, regardless of any changes to town policies, regulations, and rules after project approval.
- B. Assurances to the Town.** In return, the Town is provided assurance that the project would further important town goals and policies which have been officially recognized by the Council, and provide the Town with significant, tangible benefits beyond those that may be required by the Town through normal project conditions of approval.

9.64.020 – Qualifications of Applicant

Only a qualified applicant may file an application to enter into a development agreement, as determined at the sole discretion of the town. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement. An applicant shall submit written proof of interest in the real property or of the authority of any agent to act for the applicant.

9.64.030 – Application Submittal Requirements

Applications for Development Agreements shall be filed on a form prescribed by the Planning Division and shall contain such information and reports as may be required by the Town in order to render a decision consistent with the purpose and findings required by this Chapter.

9.64.040 – Application Fee

The application shall be accompanied by a fee established by resolution of the Council to cover the cost of handling and processing the application as prescribed in this Chapter.

9.64.050 – Investigation and Report

The Director shall cause an analysis of each application for a Development Agreement to be made. The level of detail of the analysis shall be appropriate to the type of project proposed and the needs of the Commission and Council. The analysis shall examine the application's consistency with the content, intent and purpose of the General Plan, the Development Code, and any other applicable standards or policies. To insure effective implementation of General Plan policies and the provisions of this Code, applications may be reviewed by the Development Review Committee prior to consideration by the Commission. As a result of the analysis, the Director shall cause a report to be completed including findings regarding the public health, safety and welfare.

9.64.060 – Action by Review Authorities

- A. Notice of Hearing.** A public hearing for an application for a development agreement shall be held by the Commission and the Council. The Notice of Intention to consider a development agreement by the Commission and Council is governed by California Government Code Sections 65090 and 65091 and shall be consistent with Chapter 9.85, *Public Notices and Hearings*.
- B. Recommendation by Commission.** The Commission shall make its recommendation in writing to the Council. The recommendation shall include the Commission's determination of whether the development agreement proposed is:
1. Consistent with the objectives, policies, land uses and programs specified in the General Plan and any applicable specific plan;
 2. Compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located; and
 3. Beneficial to the public health, safety, and welfare.
- C. Decision of the Council**
1. The Council may approve, modify, or deny the recommendation of the Commission. It may, but need not, refer matters not previously considered by the Commission back to the Commission for report and recommendation. The Commission may, but need not, hold a

public hearing on matters referred back to it by the council. Failure of the Commission to respond to a Council referral within forty-five (45) days shall constitute their (the Commission's) recommendation for approval.

2. The Council may not approve the development agreement unless it finds that the provisions of the agreement are: (1) consistent with the General Plan or any applicable specific plan; (2) compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located; and (3) in conformity with good land use planning; and (4) not detrimental to the health, safety and welfare.
3. Consideration for and action upon development agreements shall be consistent with and in accordance with applicable State law.

D. Approval of Development Agreements. If the Council approves a development agreement, it shall do so by the adoption of an ordinance. Such approval is a legislative act and such ordinance is subject to referendum.

9.64.070 – Amendment or Cancellation of Development Agreements

- A. Either party (or successors in interest thereof) may initiate an amendment to, or cancellation in whole or in part of, a previously executed development agreement.
- B. The procedure for initiating and adopting an amendment to, or a cancellation in whole or in part of, the development agreement is the same as the procedure for entering into the original agreement.
- C. A development agreement, after notice and public hearing, may be amended or canceled in whole or in part by mutual consent of the parties to the development agreement or their successors in interest.
- D. Amendment of a development agreement is a legislative act and must be approved by ordinance, which ordinance is subject to referendum.

9.64.080 – Recordation

- A. The applicant shall present to the Director the written consent to the development agreement of all parties having record ownership interest in the real property which is the subject of the development agreement, prior to the approval of the agreement by the Council.
- B. No later than ten (10) days after the Council approves the development agreement, the Town Clerk shall record with the County Recorder a copy of the development agreement which shall describe the land subject thereto.
- C. If the parties to the agreement (or their successors in interest) amend or cancel the agreement as provided in California Government Code Section 65868, or if the Council terminates, or modifies the agreement as provided in Government Code Section 65865.1, the Town Clerk shall record the appropriate document with the County Recorder in the manner prescribed by State law.

9.64.090 – Periodic Review

- A. The Town shall review the development agreement every twelve (12) months from the date the agreement is entered into through a public hearing by the Commission and Council.
- B. The Director shall initiate the review proceeding by giving notice as provided by Chapter 9.85, *Public Notices and Hearings*, that the Town intends to undertake a periodic review of the development agreement and shall prepare a staff report and recommendation.
- C. The Director shall determine whether the property owner has demonstrated good faith compliance with the terms and conditions of the development agreement.
- D. If the Director finds and determines on the basis of substantial evidence that the property owner has complied in good faith with all terms and conditions of the agreement during the period of review, the review for that period is concluded.
- E. If the Director finds and determines on the basis of substantial evidence that the property owner has not complied in good faith with any one or more of the terms or conditions of the development agreement during the period under review:
 - 1. The Town may initiate proceedings to modify or terminate the agreement or undertake other enforcement action as deemed appropriate;
- F. Such periodic review will end when all the terms and conditions have been completed as found and determine necessary by the Commission and Council after public hearings.

9.64.100 – Modification, Termination or Suspension

- A. A development agreement or portions thereof may be modified or terminated upon a finding of noncompliance under subsection 9.64.100, *Modification, Termination and Suspension*. In the event that State or Federal laws 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 agreements shall be modified or suspended as deemed necessary by the Council, on a recommendation by the Commission, to enforce compliance by the property owner with such subsequently enacted State or Federal laws or regulations. If such proceedings are initiated, notice shall be given as prescribed by this Code and applicable State law.
- B. At the time and place set for the public hearing on modification, suspension or termination of the development agreement, the property owner and the public shall be given an opportunity to be heard. The finding of noncompliance under subsection 9.64.060(C), *Decision of the Town Council*, shall be deemed final and not subject to reconsideration at this hearing. The issue at this hearing shall be whether termination, suspension or modification is warranted, and if so, in what respects. The Council may impose those conditions to the action it takes as it deems to be in the best interest of the Town.